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No. 90-1861

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

GREENVILLE PUBLIC SCHOOL DISTRICT, *et al.*,

Petitioners,

versus

WESTERN LINE CONSOLIDATED SCHOOL DISTRICT, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi

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BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

I Whether the law applicable to the facts of this case was not settled by *Morris v. Gressette,* 432 US 491 (1977)?

II Whether Petitioners are not actually seeking on certiorari a review of a question of fact, decided adversely to their contention in *Greenville Public School District v. Western Line Consolidated School District* (Appendix A), and in Dupree v. Mabus (a three-judge court; Appendix R), both courts considering the same evidence.

III Whether, assuming the statute in question [§ 47, Ch. 492, Miss. Laws of 1986, the "Uniform School Law"] was *not* precleared, should not Petitioners' remedy be the traditional constitutional action to enjoin enforcement of of the *voting* practices or procedures complained of?[1]

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[1] As will be fully developed, Petitioners could not care less about the amorphous effect on voting. In fact, the Petition is filed by the *school* district and by the individuals *in their official capacities as district trustees.* They seek the *tax base* on real and personal property annexed. Very few school districts vote.

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BRIEF FOR RESPONDENTS IN OPPOSITION

PERCEIVED MISSTATEMENTS OF FACT

A. The description of Western Line School District in n.1, Petitioners' Brief, is inaccurate and misleading.

The statement challenged is "Western Line is essentially a *suburban school district*." [Emphasis added] Our objection is not nit-picking, as suburban districts appear to

be given different consideration in the cases. Also, the demography of the school district is relevant to questions of voting, which is supposedly what this case is all about.

In fact, Western Line is approximately 40 miles north and south, extending from the north boundary of Washington county southward into Issaquena County. It is bounded on the west by the Mississippi River and by the boundaries of Greenville Public School District ("GPSD"), completely surrounding the latter. Its width varies from one mile (at the easterly projection of GPSD) to about 15 miles, depending on the meandering of the river. It contains approximately 442 square miles in Washington County, plus approximately 48 square miles in Issaquena county.[1]

The map, Appendix A to *Arkansas v. Mississippi*, 415 U. S. 289 (1974), includes that part of Western Line's area affected by annexation, but does not fairly show its total area, or the general character of the District. By subtracting the former acreage of Greenville from the total acreage after annexation and deducting 5500 acres of GPSD "added territory", we obtain 3,761 acres of Western Line (out of 590 square miles). This is about 1.2% of Western Line's total area[2]

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[1] See: *City of Greenville v. Farmers, Inc.*, 513 So2d 932, 939 (Miss. 1987). The Court uses 300 square miles as Western Line's area; we don't know where this number was obtained, but the difference is not material. Both numbers illustrate our point.

[2] We are reminded of a Greenville resident charged with fraudulently selling "rabbit burgers" during the Great Flood of 1927. When pressed, he admitted they were only "50% rabbit." Asked what this

(continued...)

Western Line is a *predominantly rural school district.* This is illustrated by the fact the proposed annexation affected only about 1% of its territory, but approximately 15%[3] of student enrollment, and approximately 55% of its ad valorem tax base. *Farmers, Inc., supra,* n.1.

B. The Supreme Court of Mississippi did not "approve[d] the annexation in 1987" in *Farmers, Inc, supra, n.1.*

Western Line Consol. School Dist. v. City of Greenville, 465 So.2d 1057 (Miss. 1987), reversed and remanded the case, directing the Chancellor to

> balance the equities of the parties by weighing all relevant factors to determine if the city's claim of need is defeated by inequitable consequences to those in the annexation area. . . [465 So.2d at 1060.]

He did just that; he denied the whole annexation after making specific findings related to Western Lines' objections to annexing the Mississippi Power & Light Company generating plant and the Comet Delta, Inc., facility,[4] objections of Farmers, Inc., and certain objector-farmers.

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[2](...continued)
meant, he replied, "One rabbit, one mule." Some "suburban" school district!

[3] Following annexation, more that 20% of enrollment.

[4] A 26.6 million dollar rice milling, processing, and storage facility.

Farmers, Inc., supra, again remanded the case with directions to exclude the above facilities and property, and to draw boundaries of the remainder of the proposed annexation, thus assuring an adequate tax base and financial viability for Western Line.[5]

SUPPLEMENTAL STATEMENT OF THE FACTS

Some background is needed in order to grasp the true issues here. One would think that since this action is brought under § 5 (the *Voting Rights* Act of 1965) that it petitioners were concerned over the denial or abridgement of the *right to vote.* Nothing could be farther from the truth. Petitioners do not give a tinker's damn about voting rights; they are after *tax revenues.*

Prior to 1954, there were more school districts in Mississippi than a hound dog has fleas. For example, in the area now comprising Western Line and GPSD, there was the Greenville school district (which accepted all white pupils from north to the county line and for some 8 to 10 miles to the south (boundaries were informal and elastic), the Avon school district, the Riverside district, the Chatham district and the Glen Allan district. Superimposed on these districts were separate districts for the blacks: the Black Bayou Colored district, the Riverside Colored district, the Glen Allan Colored district, and so on. Virtually every school was a separate district.

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[5] Since objectors prevailed in *Farmers, Inc., supra,* there was no controversy over the Final Decree entered December 9, 1987, and the record does not identify the Western Line acreage or tax base finally included within the new corporate boundaries.

During 1953 and 1954, Mississippi enacted the Minimum Foundation Program. Basically, control was centered in the State Department of Education; the primary source of revenues came from state taxes, distributed on a "teacher unit" basis (in effect, *per capita*); districts were re-constituted under supervision of the State Educational Finance Commission (now abolished, its functions being taken over by the State Board of Education, herein the "EFC"), winding up, as I recall, with 151 school districts, statewide.

These districts were re-constituted with emphasis on viability, economic operation, and the capability of offering a varied curriculum designed to meet the needs of modern society. A district, like a three-legged stool, had to have: (1) sufficient students to support a curriculum meeting accreditation standards; (2) an adequate teaching and administrative staff; and, (3) a tax base sufficient to support the first two.[6] The system must have worked, because today we have only 153 districts, nearly 40 years later.

This background was known to the courts and counsel below; we add it here on the theory this Court should have the same information in considering issues in this case.

The mission of a school district is to educate pupils;

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[6] The primary source of income was from the state. The only other source of income for districts for "district maintenance funds" used for enrichment (teacher salaries, local programs, etc) or for debt service, was from ad valorem taxes on real and personal property. We do not consider federal funds usually earmarked for specific purposes.

the mission of a municipality is to govern its residents and furnish municipal services such as police and fire protection, streets, drainage, sewerage, sanitation, and the like, and these take tax revenues.[7] Expansion by way of annexations is triggered by this need for tax revenues, and the municipal school district came along piggy-back, so to speak, because of § 37-7-611 and the automatic (often arbitrary) addition of any annexed territory to the school district.

During this period, § 37-7-611, Mississippi Code of 1972, was an anomaly. It was arbitrary and the only method of changing district boundaries not subject to control by the EFC. Back in the "olden days", when a municipality only annexed what it needed, the arbitrary effect of § 37-7-611 did not constitute a problem. With the rising cost of government exceeding inflationary increases in assessed valuation, cities began to annex territory in large gulps. This resulted in a rash of cases where school districts were forced to oppose annexation, literally fighting for their economic lives. Examples: *Western Line Consolidated School District v. City of Greenville,* 465 So2d 1057 (Miss. 1985) (the city sought to go from 11.6 square miles to 30.4); *Prentiss County Annexation Committee v. Booneville,* 551 So2d 890 (Miss. 1989) (from 6.9 square miles to 24.9); and *Harrison County v. Gulfport,* 557 So2d 780 (Miss. 1990) (from 29.36 square miles to 83.01).

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[7] See: *Bassett v. Town of Taylorsville,* 542 So2d 918 (Miss. 1989). The point is that criteria supporting municipal expansion differ widely from, and have no reasonable relationship to, those relevant to the constitution of school districts.

The legislative purpose of the Uniform School Law in enacting § 47 repealing § 37-7-611 was to protect the tax bases of county districts in the path of municipal expansions.[8] See: Appendix M, 145a.

PRELIMINARY ANALYSIS

Since petitioners have identified no conflicts between opinions of United States courts of appeals, or any conflict of the opinion by the Mississippi Supreme Court, a state court of last resort, with that of a United States court of appeals,[9] we are left with the following criterion for a writ of certiorari stated in Rule 10.1, Supreme Court Rules:

> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with

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[8] Since school taxes were determined by the school trustees and levied separately by the city/county under §37-57-105, there would be no reason why the city and county school district might not co-exist. This preserved the student enrollment and the financial integrity of the "target" school without interference with the need of the city for additional tax revenues. If it became necessary or desirable to adjust school boundaries, the mechanism was there in § 37-7-103 (specifically precleared as § 52 of the Act).

[9] Because § 5 contains the right to a direct appeal to this Court, we would not expect to find circuit court decisions construing the Voting Rights Act; petitioners point to no three-judge court decisions conflicting with the case below which, in fact cites and relies upon three-judge court decisions and, in turn, is cited and followed by *Dupree, infra*, a three-judge court.

applicable decisions of this Court.

We think *Morris v. Gressette,* 432 US 491 (1977), settled the question of *law* relied upon by the court below; *i.e.,* that compliance with the preclearance procedure is measured *solely* by the absence, for whatever reason, of a timely objection by the Attorney General of the United States ("USAG"), leaving only a question of fact as to whether submission of the Uniform School Law[10] for preclearance was "complete". We believe this Court has enough to say grace over as it is, without undertaking to review issues of *fact* on certiorari.

Petitioners are curiously silent in their petition about what they *really* seek to accomplish in this litigation, stated in their Amended Complaint. The relevant part of the declaratory judgment sought, as stated in the Amended Complaint, is:

> a. The repeal of Section 37-7-611 of the Mississippi Code of 1972 by Section 47 of the Uniform School Law *is void and of no effect* until it has been precleared by the Attorney General of the United States. [Emphasis added.]

The only remedy under § 5 is

> . . . unless and until the [District of Columbia district] court enters such [declaratory] judgment *no person shall be denied the right to vote* for failure to comply with such qualification,

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[10] Chapter 492, Mississippi Laws of 1986.

> prerequisite, standard, practice or procedure . . . [Appendix O, p. 178a. Emphasis added.]

Congress did not, never intended to, and could not give the USAG veto power over substantive legislation of a State, unrelated to voting. Forbidding implementation of what may or may not be valid, nondiscriminatory State legislation is a most serious matter. We note § 5 requires a three-judge court, *plus* a direct appeal to this Court, both of which are unusual, to say the least. Providing an expeditious administrative preclearance as an alternative to a time-consuming declaratory judgment is really meaningless *unless* the State could proceed with its business with some degree of certainty it had complied with § 5.

REASONS WHY CERTIORARI SHOULD BE DENIED

A. In *Gressette, supra,* this Court settled the law that the USAG automatically precleared state legislation submitted under § 5 by his failure, for whatever reason, to make a timely, specific objection.

This Court in *Morris v. Gressette,* 432 U.S. 491 (1977), squarely held that where a State legislative act has been completely submitted to the USAG for preclearance, and the USAG fails to make a specific objection to the disputed section within the 60-day period allotted---for whatever reason---he may not later interpose an objection.

In *Gressette,* a South Carolina statute was submitted to the USAG for preclearance under § 5[11] on May 12 1972. On May 23, the United States district court found

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[11] 42 USC § 1973c, referred to herein as "§ 5".

the statute constitutional, and on June 30, the USAG notified South Carolina he would interpose no objection, but would defer to the district court's determination. Thereafter, another suit was brought in the district court for the District of Columbia challenging the USAG's failure to object.

On May 16, the DC court directed the USAG to make a reasoned determination of the statute's constitutionality, and in response he stated that in his view, it was unconstitutional but refused to interpose an objection in deference to the South Carolina district court's determination. On July 19, 1973, the DC court directed the USAG to make a determination without regard to the South Carolina court's decision, and the following day, the USAG interposed an objection.

By our count, the USAG's objection was interposed 434 days after the original submission.

Gressette held: (1) from the nature of § 5 and its potential severity, Congress did not intend that the USAG's actions be subject to judicial review and that compliance with § 5 by following the preclearance procedure is measured *solely* by the *absence* for whatever reason of a timely objection by the USAG; (2) Congress intended to provide covered jurisdictions with an *expeditious* alternative to the declaratory judgment action by providing submission to the USAG as an alternative, and since judicial review of his actions would unavoidably extend the period specified in the statute, it is necessarily precluded; and, (3) where the discriminatory character of an enactment is not detected upon review by the USAG, it can be challenged in traditional constitutional litigation,

but it cannot be questioned in judicial review of (a) the USAG's exercise of his discretion under § 5, *or* (b) his failure to object within the statutory period.

The effect of § 5 is that a "covered jurisdiction"[12] may not "enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968," unless or until *either* (1) a declaratory judgment has been entered by the district court for the District of Columbia to the effect that the enactment "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, . . .", *or* (2) it has been submitted by the chief legal officer to the USAG and the USAG has not interposed an objection within sixty days after such submission or has affirmatively indicated such objection will not be made. Neither an affirmative indication he will not object, nor the USAG's failure to object, nor such a declaratory judgment shall bar a subsequent action to enjoin enforcement. Appendix O, pp. 178-9a.

Gressette points out that this Court has described the nature of the § 5 remedy as "unusual" and "severe" [432 US at 501]; In *McCain v. Lybrand,* 465 US 236, 244 (1984), this Court commented,

> The "preclearance" requirement mandated by § 5 of the Act is perhaps the most stringent of these remedies, and certainly the most extraordinary.

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[12] Mississippi is a covered jurisdiction.

As originally drafted, all such voting changes had to be approved by the District Court for the District of Columbia, and

> [J]ustified concerns arose that the time required to pursue such litigation would unduly delay the implementation of validly enacted, nondiscriminatory state legislation. Cognizant of the problem, Attorney General Katzenbach suggested that the declaratory judgment procedure "could be improved by applying it only to those laws which the Attorney General takes exception to within a given period of time" Senate Hearings 237. The legislation was changed to incorporate this suggestion.
>
> In the light of the potential severity of the § 5 remedy, the statutory language, and the legislative history, we think it clear that Congress intended to provide covered jurisdictions with an *expeditious* alternative to declaratory judgment actions.

432 US at 504. Emphasis added.

B. The Uniform School Law as submitted satisfies *Gressette's* requirement the submission must be "complete".

The Uniform School Law was approved April 15, 1986, with an effective date of July 1, 1987. It was submitted to the USAG for preclearance under § 5 on July 22, 1986. As the title implies, the purpose was to "pro-

vide that all public school districts in the state of Mississippi shall have a common system of administration." [Appendix A, p. 3a][13]

As pointed out by the Mississippi Supreme Court,

> *The submission included the act in its entirety; a copy of the roll call voters of both houses; and a looseleaf booklet*[14] *entitled "Senate Bill No. 2117---Comparison of Current Law and New Law" which set forth each section of the then current law followed by each applicable section of Senate Bill Number 2117 for explanatory purposes.* The submission states in part, "[f]or the sake of brevity, the submission will only set forth the particular sections which deal primarily with the voting rights even though *the complete act is submitted for review.*". (emphasis added). The submission then lists specific provisions of the Act among them Section 52, amending Miss. Code Ann. § 37-7-103, and Section 57 amending § 37-7-113. [Appendix A, p. 9a; emphasis is in the original.]

We believe the Mississippi Attorney General ("MAG") specifically brought to the attention of the USAG only those sections of the Uniform School Law

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[13] *Cf.* §37-6-3(1), Mississippi Code of 1972.

[14] My secretary counts 467 pages.

which he *perceived* as affecting voting.[15] § 47 repealed all sections of the current law giving different treatment to municipal separate school districts, including the bone of contention here, § 37-7-611, Mississippi Code of 1972.

C. Whether the MAG fairly and squarely "submitted" § 47 of the Uniform School Law to the USAG for

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[15] To be candid, neither do we perceive § 47 of the Uniform School Law as affecting voting. Residents of Western Line will continue to vote for district Trustees who control the education of their children and determine the annual millage levy for school purposes. They have a direct interest in these elections, and have a right to vote for them. Similarly, we have no quarrel with the fact Western Line residents will be able to vote for councilmen who appoint Trustees of GPSD. These councilmen are responsible for the operation of the City and for levying city taxes and furnishing all municipal services (police and fire protection, streets, drainage, sewerage, etc.) in which these residents, as a class, have a direct interest. The flip side of that question is that these residents, as a class, cannot constitutionally be *excluded* from voting for these councilmen. We agree with the MAG's conclusion,

> The repeal of Section 37-7-611 was based on the legislative finding that public educational opportunities available to students residing in rural areas of Mississippi were substandard to those offered to students residing in urban areas. The purpose underlying the repeal of Section 37-7-611 was to protect the ad valorem tax base available to county school systems in the path of municipal expansions. The repeal of Section 37-7-611 was an educational decision totally unrelated to voting rights considerations, . . . [Appendix M, 145a]

To give this Court some idea of the nature of cases brought under § 5 under the guise of *voting*, *Nickles v. Western Line Consol. School Dist.*, No. GC90-45-B-O (ND MS, filed February 22, 1990), cited in Petition, p. 7, n.7, was brought by Mrs. Janice Nickles, a *white* resident of Western Line, and her two minor school children. Mrs. Nickles *was not even registered to vote;* her children are not old enough.

preclearance is a question of fact, not law, and not reviewable on certiorari.

We shall not belabor this point other than to cite Rule 10.1, Supreme Court Rules, and to point out that petitioners have already had two bites at this cherry. The court below called for an *amicus curiae* brief from the MAG, which was prepared by Giles W. Bryant, Esq., a Special Assistant Attorney General. By agreement of counsel, Mr. Bryant furnished the Mississippi Supreme Court the same documents relating to the submission as he furnished a three-judge court in *Dupree v. Mabus,* Appendix R, p. 1b.[16] *Dupree* is a "white horse" case, on all fours as to law and the facts. Perry Sansing, Esq., representing the petitioners here, represented the plaintiffs in *Dupree, supra.* The issue was the same in both cases: had § 47 of the Uniform School Law been precleared by the USAG? Neither the Supreme Court of Mississippi nor the three-judge court in the Southern District bought petitioners' argument that the repeal of § 47 was somehow hidden from the USAG and thus "not submitted". Of course, *had* it been hidden, or if the USAG simply overlooked or did not detect this repeal of S 37-7-611, petitioners' remedy is provided by § 5, itself:

> Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object,

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[16] A direct appeal to this Court under § 5 has been perfected by filing a timely Notice of Appeal. Although judgment was entered April 2, 1991, this case has not yet been officially reported, and on inquiry there is some doubt it will be submitted for publication. Because of its importance here, we have elected to reproduce the opinion in appendix form.

> nor a declaratory entered under this section shall bar a subsequent action *to enjoin enforcement of such qualification, prerequisite, standard, practice or procedure . . .*[17] [Emphasis added.]

It might be useful to point out that *two* separate courts, considering the same issue [whether § 47 had been precleared], on the same facts [surrounding the original 1986 submission to the USAG], have reached the same result, each holding that *as a matter of law on undisputed facts* there had been a "complete" submission of § 47.

D. This case is a perfect example of what happens when the USAG, on a § 5 review, goes beyond the impact of State legislation on *voting*.

In the USAG letter of March 31, 1989, interposing an objection to repeal of § 37-7-611 (*983 days* after its original submission), he gives the following as one reason:

> While we recognize that demographic patterns are not uniform throughout the state, demographic data available to us *suggest that the repeal of Section 37-7-611* <u>*will have a significant racial impact.*</u> According to information published by the State Department of Education, approximately half the municipal school districts in the State of Mississippi have a student population that is majority black and

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[17] We believe petitioners have scant interest in enjoining annexed Western Line residents from voting for city councilmen. Petitioners want Western Line's students and a bite out of its tax base; Western Line doesn't want to surrender either. That's this lawsuit in a nutshell.

> about two-thirds are 40 percent black or higher. Thus, with the repeal of Section 37-7-611, *the long term effect appears to be that, with the movement of whites out of the cities, the municipal school systems in Mississippi will essentially be frozen in their present boundaries with increasingly higher black population percentages and will be economically disadvantaged while neighboring school districts change in an opposite manner.* [Appendix L, pp.140a-41a. Emphasis added.]

Respectfully, what in the name of this ever-living, blue-eyed world does this have to do with *voting*? If the result intended by the USAG, and sought by petitioners, were limited to voting by this "class of city voters", no life or death problem would ensue, since the § 5 remedy would be a simple ban on implementation of the *voting change,* but not on leaving school boundaries in place. *Cf.: Dotson v. City of Indianola,* 514 FSupp 397 (ND MS, 1981). Preclearance of the *annexation* was under consideration contemporaneously with the squabble over § 47, and the USAG's objections were not withdrawn until February 11, 1990. [Appendix A, p. 4a-5a.] Since the problem is stated as creating a new class of *city* voters, should not this have been logically considered in the annexation preclearance, rather than in the consideration of the Uniform School Law?

Let's look at this.

Taking advantage of the ambiguity in the USAG's preclearance of the Uniform School Law, seemingly limited to "the voting changes occasioned by Senate Bill No. 2117 *as identified in your July 22, 1986, letter"* [Appendix

H, p., 112a. Emphasis added.], petitioners commenced this action seeking school taxes levied by Western Line on property in the annexed area. In addition, they had given the county tax collector a letter, noticing her that GPSD claimed such taxes, which had the effect of cutting off Western Line's cash flow. What was the situation?

The Western Line territory affected consists of 3761 acres contiguous to the old Greenville city limits and to the boundaries of the former Greenville Municipal Separate School District. Using data in *Farmer's, Inc., supra,* GPSD would take 300 of 2030 Western Line students, and $39.9 (about 55%) of Western Line's $73+ millions tax base, but only about 1% of its territory. In addition, Western Line would lose 11 teacher units with $212,000 in state minimum foundation program support.[18]

§ 37-9-105, Mississippi Code of 1972, required school districts to notify a teacher by April 8th of each year if he/she were not to be tendered a contract for the ensuing school year. Failure to give this notice meant the teacher's contract was *automatically* renewed. *Robinson v. Board of Trustees,* 477 So2d 1352 (Miss., 1985). Because of the uncertainty created by petitioners' action, Western Line did not know, and could not predict: (1) whether it would have 2030 or 1730 pupils to educate for the following school year; (2) whether there would be tax revenues available during the following school year for the education of these 300 students, or for the salaries of these 11 teachers; or, (3) if the required notice of non-reemployment were given the teachers, whether they would be lost

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[18] It takes no stretch of the imagination to visualize what this would do to Western Line's viability as an educational entity.

for good or available for employment if needed.

Moreover, this uncertainty extended to the students and their parents as to where they would attend school the following year, as well as to the administrative and structural staffs. One might well comment, "that's a helluva way to run a railroad."

On these facts, Circuit Judge Clark granted a "moratorium"[19] for the fiscal year 1988-89, and petitioners appealed.

E. There is a lot to be said for *certainty* following a preclearance of State legislation by the USAG.

We believe the language of § 5 as well as its legislative history [see pp. 11-12, *supra*] buttress the conclusion it provided what *Gressette* refers to as an "expeditious alternative to declaratory judgment actions"[432 US at 504], and it was intended that a State might go about its business implementing legislation, once precleared. With the premise State legislation has been fairly and squarely submitted to the USAG, we are reminded of language most of us may be familiar with,

> If any man can show just cause, why they may not be lawfully joined together, let him now speak, or else hereafter for ever hold his peace. [*The Book of Common Prayer* (1928 Ed.), p. 300]

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[19] Continued by the Supreme Court of Mississippi during pendency of the appeal by an interim order entered March 29, 1989.

What has happened in this case is sufficient justification for the proposition. Because of the ambiguity arising out of the USAG's weasel words, "as identified in your letter of July 22, 1986," it is not beyond the realm of possibility some enterprising lawyer may come up with yet another provision of the Uniform School Law perceived to affect voting, *five years* after the original submission.

REBUTTAL

With deference, we believe further argument on whether the original submission of the Uniform School Law for § 5 preclearance by the USAG was "complete" within the meaning of the *Gressette* holding would be redundant. Suffice it to say that *on the same facts,* the eight-judge Supreme Court of Mississippi and the three-judge *Dupree* court have unanimously found as a matter of law that the submission was complete. Should argument be considered necessary, we will be content to incorporate the *Dupree* opinion by reference [Appendix R].

Nowhere in this action is there any claim that any petitioner's right to vote has been abridged or denied on account of race or color, nor does any petitioner claim he/she has been "denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice or procedure [contained in the Uniform School Law]". We note the parties are "named in their *official* capacities" [Petition, ii]; a school trustee does not vote in his/her "official capacity".

In all cases cited above spawned by claims § 37-7-611 has not been precleared, we defy petitioners to identify a *single one of them* based upon any alleged denial or

impairment the right to vote on account of race or color.[20] Every one of them, without exception, is an attempt to take students and/or ad valorem tax base from the adjoining school district, without regard for the consequences. On pages 16-19, above, the consequences or potential consequences of an action such as this are described in detail. *None* is related to voting.

Petitioners rely heavily on *McCain v. Lybrand, supra,* the opening paragraph of which is quoted:

> In 1966, South Carolina enacted a statute that altered Edgefield County's election practices but the statute was not submitted to federal officials for their approval as required by the Voting Rights Act of 1965. In 1971, the statute was amended, modifying the 1966 election practices, and state officials submitted the amendment to the Attorney General for his approval. In response to a request from the Attorney General, state officials provided him with additional documentation in support of their submission, including the 1966 statute. The Attorney General approved the submission, stating that he did not object to the change in question. *The question in this case is whet-*

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[20] We in Western Line actively resent baseless charges of discrimination based on race or color. When the *Singleton*-type desegregation decree was entered against it in January of 1970, Western Line was determined to desegregate and *make it work.* It did so. *Farmers, Inc., supra,* at 939. GPSD did not. We would venture to make the general statement there is less racial discrimination today in Mississippi as a whole and Western Line in particular than there is, say, in the District of Columbia.

> *her the Attorney General's approval of the 1971 submission can be deemed to have the effect of ratifying the changes embodied in the 1966 enactment. We hold that the 1966 changes have not been approved.* 465 US at 238-39. Emphasis added.

In the case at bar, the facts are completely different. Here, petitioners cannot dispute the fact the Uniform School Law was submitted for preclearance in its entirety. The question before this Court is whether the USAG's failure to object to § 47 constituted preclearance under § 5. Consequently, *McCain* may not be used as authority one way or another on the precise issue decided by the court below; i.e., did the AGUS preclear § 47 by his failure to *then* object?

We expect petitioners to make the same arguments in reliance on the recent case[21] of *Clark v. Roemer,* --- US ---, 1991 WL 89713 (USSC, June 3, 1991), and we think it distinguishable on the facts. *Clark* involved the holding of elections for judgeships. As to some, the three-judge court found the USAG had interposed valid objections when submitted for preclearance ("Group I"); as to others, historically some of the earlier judgeships had never been submitted for preclearance, but most of the later ones had ("Group II"). As to both groups, Louisiana had filed for judicial preclearance by the District of Columbia district court. The three-judge court refused to enjoin the elections for these judgeships, but did enjoin the winners from taking office pending judicial preclearance. This Court held it error not to enjoin the Group I

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[21] Decided June 3, 1991, the same day this petition was filed.

elections in the face of the plain § 5 mandate. As to the Group II seats, the three-judge court had reasoned it was not the amendments, but the whole legislative act covering all of the judgeships which was submitted for preclearance, and that when the USAG approved the new act, "he not only approves the amended portion but necessarily approves the older, reenacted part, which forms part of the new act." [1991 WL 89713, *7 (US)] *Clark* held this governed by *McCain, supra,* and that the injunction should have issued.

Clark raises the question of identifying the voting changes submitted for preclearance, This was done in the context of Group II cases where the question was preclearance "of what?" Specifically, was the USAG being asked to preclear only the amendments adding new judgeships, or both the amendments and the original legislative act being amended, which included some unprecleared judgeships. In this context, we would think good faith would require Louisiana identify *both* the old act and the new additions in submitting it for preclearance, particularly if Louisiana intended to submit the old with the new. We use the words, "good faith", advisedly, because we believe a submitting jurisdiction is under a duty to present the matter fairly and squarely. *McCain, supra,* 465 US at 247. Then, too, we believe "sandbagging", and "trial by ambush" have no place in the practice of law.

Clark, purely and simply, is a variation on the *McCain* theme. . .nothing more.

We are convinced *neither* the MAG *nor* the USAG had any idea the repeal of § 37-7-611 affected voting rights, pointing out that the former had singled and dis-

cussed what he *thought* were all the "particular sections which deal primarily with voting rights". Appendix E, p. 35a.

What of this "preclearance by implication"? First, applying the *Gressette* rule, we need not reach this question. We suggest this "implied preclearance" is a matter of semantics. The Court below simply demonstrated that the specific preclearances of § 52 and § 57 is entirely inconsistent with the objections raised to § 47, ***1,403** days after the original submission.* This is entirely inconsistent with Congressional intent that the administrative procedure be an "expeditious alternative" to an action for declaratory judgment. Of course, if preclearance by the USAG can be re-opened or collaterally attacked three to four years after the initial preclearance, *no State can safely implement legislation precleared by this "expeditious alternative".*

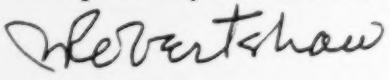
CONCLUSION

Backing off for a proper perspective, it is apparent the confusion arose as to whether § 37-7-611 had been repealed arose *because* the USAG *neither precleared nor objected to* § 47 of the Uniform School Law. Under *Gressette*, this constitutes preclearance. When State legislation is properly submitted to the USAG for preclearance, the time has come; "let him now speak, or else hereafter for ever hold his peace."

Preclearance can never constitute an "expeditious alternative to the declaratory judgment action" under § 5 unless and until the State can rely upon the preclearance by the USAG as full compliance with § 5.

The petition for certiorari should be denied.

Respectfully submitted,



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CERTIFICATE

I certify that I have this date forwarded the foregoing Brief in Opposition via Federal Express, charges prepaid, to the Press of Byron S. Adams, Washington, D. C., for printing, binding and filing with the Clerk of this Court not later than July 5, 1991, with further directions to serve three copies, each, upon counsel for Petitioners at the addresses stated below, and to file its affidavit of such service with this Court:

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Dated: June 25, 1991.

J. Robertshaw
Counsel of record for Respondents

APPENDIX

APPENDIX R

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JOHNNY DUPREE, ET AL,

Plaintiffs,

versus

RAY MABUS, Governor of Mississippi, ET AL,

Defendants,

THE LAMAR COUNTY BOARD OF EDUCATION and TRUSTEES, in their official capacities and FORREST COUNTY SCHOOL DISTRICT and the Members of the BOARD OF TRUSTEES in their official capacities,

Defendants/Intervenors.

Civil Action No. H90-0043(W)

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
APR 02 1991
J. T. NOBLIN, CLERK
BY _____ DEPUTY

MEMORANDUM OPINION AND ORDER

Pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2284,

this action under § 5 of the Voting Rights Act of 1965 is before this three-judge Court on motions for summary judgment pursuant to Fed.R.Civ.P. 56 by (1) the plaintiffs, members of the Board of Trustees of the Hattiesburg Public School District; (2) defendants, Ray Mabus and Mike Moore in their capacities as Governor and Attorney General of Mississippi, respectively, and the State of Mississippi; and (3) intervenor/defendant, the Forrest County School District and its Board of Trustees; and on the Rule 12(b) motion to dismiss by intervenor/defendant, the Lamar County Board of Education and its Trustees.[1]

I.

Beginning in 1966, the City of Hattiesburg (City) began expanding, through annexations, into Forrest and Lamar Counties; and the citizens in these annexed areas vote in City municipal elections. However, the City's municipal school district boundaries have not expanded with the annexations.

State laws enacted, and in one instance repealed, since 1977 affect the composition of both municipal and county school districts and allow the annexed areas' voters not residing in the City school district to vote for the City's governing authorities, who in turn select the City school board. Accordingly, the plaintiffs allege that these changes constitute voting changes covered by § 5 of the

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[1] The state defendants moved to dismiss for failure to state a claim upon which relief may be granted, Rule 12(b)(6), or alternatively for summary judgment. Rule 12(b) provides that if a 12(b)(6) motion is made and "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." Because we consider matters outside the pleadings, we treat the motions to dismiss as summary judgment motions.

Voting Rights Act of 1965 (Act), 42 U.S.C. § 1973c.

The plaintiffs, residents and registered voters in the City and Forrest County and duly appointed members of the Board of Trustees of the City school district, filed this action in February 1990, seeking, *inter alia*, to enjoin the State of MIssissippi and state officials from enforcing three state statutes: (1) the 1977 amendment to Miss. Code Ann. § 21-1-59, Ch. 379, 1977 Miss. Laws 5432; (2) the 1978 revision of the 1977 amendment to § 21-1-59, Ch. 312, 1978 Miss. Laws 418; and (3) the 1986 repealer of Miss. Code Ann. § 37-7-611, Uniform School Law, Ch. 492, § 47, 1986 Miss. Laws 687. The plaintiffs contend that these laws have not been precleared pursuant to § 5 of the Act and are therefore unenforceable.[2]

The Lamar and Forrest County Boards of Education and the members of their Boards of Trustees intervened as defendants. The Lamar County Board filed a counterclaim, alleging that the relief sought by the plaintiffs would violate a desegregation order under which the Lamar County School District
operates, by radically altering the racial balance of that district in violation of 42 U.S.C. § 1983 and the Fourteenth Amendment.

It is undisputed that § 52 of the Uniform School Law, § 37-7-103, was precleared. In effect, it is the successor to one of the three statutes in issue--§ 37-7-611. The Mississippi Supreme Court recently held in *Greenville Public School District, et al. v. Western Line Consolidated School District, et al.*, No. 07-CA-59534 (December 12, 1990), that repeal of § 37-7-611 was precleared when the United

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[2] Pursuant to its March 7, 1991, motion, the United States was granted leave to submit a brief as amicus curiae. The United States contends that § 5 applies and that the requisite preclearance has not been received.

States Attorney General (USAG) failed to interpose an objection to the entire 1986 Uniform School Law. That court also held that if not expressly precleared, § 37-7-611 was precleared implicitly by the express preclearance of § 37-7-103 of the Uniform School Law, because the two provisions are "clearly inconsistent." Id. at 14.

II.

The Act provides that certain jurisdictions may not implement any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964" without first obtaining approval from the United States District Court for the District of Columbia or, alternatively, from the USAG that the proposed change does not, or will not, have a discriminatory purpose or effect. 42 U.S.C. § 1973(c).

Due to the expense and burden of instituting and action for declaratory judgment in the D.C. District Court, most covered jurisdictions opt for the USAG approval alternative. The Act and regulations implemented under it provide that once a proposed change has been submitted to the USAG, he has 60 days within which to object. The USAG may request additional information; and if an objection is interposed by the USAG, the submitting party may request reconsideration.
28 C.F.R. §§ 51.37; 51.45. Such a request triggers another 60 day period for the USAG to decide whether to continue or withdraw his objection. *Id.* at § 51.48. If the USAG fails to object within the prescribed time, the jurisdiction is free to implement the new enactment. But, even if the legislation is precleared by the USAG, nothing in the statute prevents a subsequent judicial challenge to that legislation.

We turn first to a discussion of the Mississippi statutes in issue: §§ 21-1-59 and 37-7-611 (repealed).

A.

Prior to 1977, § 21-1-59 provided that "[n]o municipality shall be created or shall change its boundaries so as to include within the limits of such municipality any of the buildings or grounds of any state institution" unless consent was obtained from the governing body of the institution. In 1977, the section was amended to add the following:

> Provided further, that any change in the boundaries of a presently existing municipality *which crosses county lines* shall not affect the public school district located in the annexed area unless and until consent thereto shall have first been obtained in writing from the Board of Trustees of the school district proposed to be partially or wholly included in the change of municipal boundaries.

Ch. 379, 1977 Miss. Laws 543 (emphasis added). This amendment was applicable to certain of the City's annexations; it created an exception to the above referenced § 37-7-611, further discussed below, which provided that such expansion automatically included the municipal school district incorporating the annexed area.

As discussed below, the 1977 amendment was not submitted for preclearance to the USAG until March 23, 1990, because the state defendants believed that the amendment was not subject to § 5, being of the view that it had the effect of preserving the status quo and was thus not a voting "change."

In 1978, § 21-1-59 was amended again. Ch. 312, 1978 Miss. Laws 418. The amendment made the statute applicable to future annexations into a neighboring county by adding the following italicized language:

> Provided further that any changes in the boundaries of a presently existing municipality which *extends into or further extends into a county in which the municipality's principal office is located* shall not affect the public school district located in the annexed area, unless and until consent thereto shall have been first obtained. . . .

(Emphasis added.) A referendum provision was also added for the Jones County-Laurel area concerning the acquisition of county school territory by the Laurel public schools.

The statute, as amended in 1978, was submitted for preclearance in April 1978. The submission did not mention the "extends into or further extends" language, referencing only the referendum. When the State responded to the USAG's request for additional information, again no mention was made of the "extends" language. In March 1981, the USAG interposed no objection.

The 1986 Uniform School Law did not change § 21-1-59. In May 1990, the USAG objected to the 1977 amendment submitted for preclearance, stating:

> [W]e note that the state makes several claims about the preclearance status of the instant changes which appear to seriously misconstrue the structure, purpose, and history of the preclearance requirement. . . .The state. . .contends that a 1978 amendment which clarified the scope of the instant 1977 change was precleared when the

> state in 1981 received preclearance for a separate portion of the 1978 statute.

The USAG rejected this claim.

B.

Prior to being repealed in 1986 by § 47 of the Uniform School Law, Ch. 492, 1986 Miss. Laws 687, the other statute in issue, § 37-7-611, enacted in 1926, stated in part:

> Where the corporate limits of any municipality which constitutes a municipal separate school district, either with or without added territory, are extended so as to include the whole or any part of an existing adjacent school district in the county school system or municipal separate school district, then such adjacent school district, or such part thereof as is included within the corporate limits of the municipality by reason of the extension thereof, shall thereby automatically be merged with and become a part of such municipal separate school district.

Miss. Code Ann. § 37-7-611 (1972). As discussed above, § 21-1-59, as amended in 1977 and 1978, provided an exception to § 37-7-611, concerning how municipal school districts were affected by certain municipal expansions.

In 1986, the Mississippi Attorney General (MAG) submitted Senate Bill 2117, the Uniform School Law of 1986, for preclearance. The cover memorandum for the submission stated that the law was submitted "in its entirety" and provided:

> The act accomplishes a reorganization and

> streamlining of laws which govern the operation, financing, and administration of the public schools in Mississippi. Senate Bill number 2117 is reform legislation supplemental to and a logical extension of the Education Reform Act of 1982. . . *For the sake of brevity, the submission will only set forth the particular sections which deal primarily with voting rights even though the complete act is submitted for review.*

(Emphasis added.) The memorandum explained 13 sections of the Uniform School Law and their effect on voting.

The repealer of § 37-7-611 was not discussed in this cover letter. However, accompanying the submission was a booklet comparing each section of Senate Bill 2117 with prior law, together with an underlined version of Senate Bill 2117, reflecting the new language as well as deletions of prior language. The booklet's introductory note provided:

> This booklet sets forth on a section by section basis each section of the current law which has been amended followed by each individual section of Senate Bill Number 2117, Laws of Mississippi, 1986 Regular Session. Where the sections of Senate Bill Number 2117 are new law then only those particular sections will be denoted with no comparison of current law. This section by section comparison provides explanatory materials adequate to disclose the difference between the prior and the proposed law. Each section of Senate Bill Number 2117 which is the version of the bill as sent to the governor is marked to show the changes made in

> the current law. Underlining indicates language added and a check mark indicates language deleted. By comparing each section of Senate Bill Number 2117 and the current practice, the changes to current law are easily identified.

The above referenced section 47 of the Uniform School Law provided for the repeal of 23 sections, including § 37-7-611. The booklet stated that these 23 sections "which provide for the creation and operation of municipal separate school districts, are hereby repealed."

Section 52 of the Uniform School Law amended § 37-7-103. This provision was specifically discussed in both the cover memorandum accompanying the submission and the booklet. The cover memorandum provided:

> Section 52 amends Section 37-7-103. . .[and] sets forth that . . .the school board of any school district may abolish such existing district or reorganize, change or alter the boundaries of any such district. Additionally, the school board with the consent of the school board of the district involved may add to such school district any part of the school district adjoining same or may detach territory from such school district and annex the same to an adjoining district. The present law enables the county board of education to create, alter or abolish any school districts of such county, other than the municipal separate school districts. In addition, the county board of education with the consent of the board of trustees of the municipal separate school district involved may add to such municipal separate school districts any part of the county adjoining same or may detach territory from such

> municipal separate school district and annex same to an adjoining district in the county school system.

On August 29, 1986, the USAG advised the MAG that he did "not interpose any objection to the voting changes occasioned by Senate Bill No. 2117 (1986), *as identified in your July 22, 1986, letter.*" (Emphasis added.) The letter concluded:

> We note that several of the provisions of Senate Bill No. 2117 (1986) authorize officials of the political subdivisions of the State to make changes affecting voting which are viewed as enabling legislation. Therefore, local officials are not relieved of their responsibility to seek preclearance, pursuant to the requirements of section 5, of any changes effecting voting (e.g., changing voting precinct lines, polling places, special election dates and procedures, boundary changes, etc.) which are adopted as a result of the provisions of Senate Bill No. 2117. 28 C.F.R. 51.14.

The State concedes that the USAG's letter raised doubt about whether the preclearance included provisions other than those 13 specifically listed in its cover memorandum. Therefore, in December 1987, the MAG sought an affirmative preclearance of § 47 insofar as it repealed Miss. Code Ann. § 37-7-611. In the State's resubmission, it reserved the right to object to § 47 being subject to preclearance. The memorandum accompanying the resubmission further stated:

> It is the automatic expansion of the school district which has been repealed by the instant

> submission. The option to expand however, is not foreclosed. Section 52, of the Chapter 492 of the 1986 Laws of Mississippi (precleared by the United States Justice Department on August 29, 1986) provides that the school board of any school district may abolish such existing district or reorganize, change or alter the boundaries of any such school district.

On February 29, 1988, the USAG requested additional information concerning the repeal of § 37-7-611. The State responded; and on March 31, 1989, the USAG objected to the implementation of § 47 of the Uniform School Law insofar as it repealed § 37-7-611. The State requested reconsideration; and by letter dated May 25, 1990, the USAG declined to withdraw his original objection, stating in part:

> It is well-established that to trigger Section 5 review a covered jurisdiction must submit a voting change to the Attorney General in an "unambiguous and recordable manner." [T]he prior submission of the Uniform School Law. . .identified specific voting changes adopted by those statutes, but...[the] submission contained [no] reference to the voting changes which the state now claims were precleared. Section 5, as interpreted by the courts and our submission guidelines, plainly fixes the responsibility for identifying voting changes on the state, not the United States Attorney General, yet the state appears to be arguing...that the Attorney General should have uncovered voting changes of which the state itself seemingly was unaware at the time the prior submissions were made.

III.

Rule 56 provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The language of Rule 56 "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden at trial." *Celotex corp. v. Catrett,* 477 U.S. 317, 322 (1986).

A.

The intervenors and defendants raise several issues which must be addressed before consideration of the § 5 issues.

1.

The defendants and Lamar County assert that no relief can be granted against the Governor or the MAG because they have no duty to administer laws concerning alteration or definition of school district boundaries. Section 5 provides that state enactments may not be enforced unless they have "been submitted by the *chief legal officer* or other appropriate official of such State or subdivision to the [United States] Attorney General. . . ." 42 U.S.C. § 1973c (emphasis added).

The primary issues in this case are whether the statutes are covered by § 5 and, if so, whether they have

been precleared. In Mississippi, the attorney general is "the chief legal officer and advisor for the state." Miss. Code Ann. § 7-5-1 (1972). The Attorney General is a proper party to this action. The Governor, however, is not responsible for preclearance. The Act uses the phrase chief legal officer or other appropriate state official. Because the MAG is the chief legal officer, no other state official is required to act. The Governor has no statutorily imposed responsibility to ensure that statutes are precleared.[3] Accordingly, he will be dismissed from this action.

2.

The intervenors contend that the plaintiffs lack standing to pursue their claim, because the statutes do not result in a change in voting affecting the Board of Trustees of the City school district. Whether plaintiffs have standing is directly related to whether these statutes are § 5 changes in voting; and as discussed *infra*, they are. To have standing, the plaintiffs must have a "distinct and palpable injury" and a "fairly traceable" causal connection between the claimed injury and the challenged conduct of the defendant. *Warth v. Seldin*, 422 U.S. 490, 501 (1975) and *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 261 (1977); *see also Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 72 (1978). The Act extends to States and the subdivisions thereof. "It is consistent with the broad purpose of the Act to allow the individual citizen standing to insure that

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[3] Moreover, the Lamar and Forrest County Boards and Trustees have intervened in the suit. To the extent administration or enforcement of the statutes in issue were required, such relief could be directed to these parties.

his city or county government complies with the § 5 approval requirements." *Allen v. State Bd. of Elections,* 393 U.S. 544, 557 (1969). In *Allen*, the Court further stated:

> [T]he major purpose of the Act indicates that appellants may seek a declaratory judgment that a new state enactment is governed by § 5. Further, after proving that the State has failed to submit the covered enactment for § 5 approval, the private party has standing to obtain an injunction against further enforcement, pending the State's submission of the legislation pursuant to § 5.

Id. at 555.

The plaintiffs are residents and registered voters in the City and are members of the Board of Trustees of the City school district. They allege that if the statutes continue to be enforced, voters in the annexed territory who are not residents of the City school district will elect the City mayor and council members who, in turn, will select the trustees of the City school board. The plaintiffs allege a distinct injury under the Act which is directly traceable to the defendants' alleged failure to comply with the requirements of § 5. As noted by the Court in *Allen*, § 5 "might well prove an empty promise unless the private citizen were allowed to seek judicial enforcement of the prohibition." *Id.* at 557. The plaintiffs have standing.

3.

The state defendants contend that the action is barred by the Eleventh Amendment, asserting that only the USAG may sue a State pursuant to the Act. This argument is without merit. The Supreme Court in *Allen*,

discussed *supra*, held that private citizens may bring an action under § 5.

Lamar County argues that the action is barred by the Eleventh Amendment, pursuant to *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89 (1984). But *Pennhurst* concerned the failure of state officials to carry out their duties under state, not federal, law; the plaintiffs' claim concerns failure to adhere to federal law. Furthermore, as is more than clearly established, Eleventh Amendment immunity does not bar actions for injunctive relief against state officials on the basis of federal law under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908).

4.

The intervenors also contend that the case is not ripe for decision, because a 1966 City annexation into Lamar County was never precleared by the USAG.[4] (The other annexations were precleared.) The 1966 annexation was the basis for all subsequent annexations, because they are contiguous to that annexation. Under Mississippi law, annexations must be "adjacent" to the municipality. Miss. Code Ann. § 21-1-27 (1972).

The status of the 1966 annexation does not affect our jurisdiction to consider whether the statutes in issue are covered by the Act and, if so, whether they have been precleared. The "basic rationale [of the ripeness doctrine] is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." *Abbott Laboratories v. Gardner*, 387 U.S.

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[4] The Lamar County intervenors stated that they were contemplating an amendment to their Answer for leave to file a third party complaint against the City challenging the validity of the 1966 annexation. They have not done so.

(j) To see that fuel and heating are provided in the schools at all times when same are needed;

(k) To authorize the use of the school buildings and grounds for the holding of public meetings and gatherings of the people under such regulations as may be prescribed by said board;

(l) To prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of the schools, and to transact their business at regular and special meetings called and held in the manner provided by law;

(m) To maintain and operate all of the schools under their control for such length of time during the year as may be required;

(j) To see that fuel and heating are provided in the schools at all times when same are needed;

(k) To authorize the use of the school buildings and grounds for the holding of public meetings and gatherings of the people under such regulations as may be prescribed by said board;

(l) To prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of the schools, and to transact their business at regular and special meetings called and held in the manner provided by law;

(m) To maintain and operate all of the schools under their control for such length of time during the year as may be required;

(n) To enforce in the schools the courses of study and the use of the textbooks prescribed by the proper authorities;

(o) To suspend or dismiss pupils when the best interest of the school makes it necessary, and to deny admission to or suspend or dismiss children who are found to be so mentally or emotionally abnormal that their attendance at the school is detrimental to the best interest of the child involved or to the other pupils attending the school;

(p) To make orders directed to the county superintendent of education for the issuance of pay certificates for lawful purposes on any available funds of the district;

(q) To select superintendents, principals, and teachers in the manner provided by law;

(r) To provide and regulate athletic programs and other school activities; and

(s) To join, in their discretion, for the school trustees in their district, any association of school boards and to pay from local funds other than minimum foundation funds, any membership dues.

(n) To enforce in the schools the courses of study and the use of the textbooks prescribed by the proper authorities;

(o) To suspend or dismiss pupils when the best interest of the school makes it necessary, and to deny admission to or suspend or dismiss children who are found to be so mentally or emotionally abnormal that their attendance at the school is detrimental to the best interest of the child involved or to the other pupils attending the school;

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(r) To provide and regulate athletic programs and other school activities; and

(s) To join, in their discretion, for the school trustees in their district, any association of school boards and to pay from local funds other than minimum foundation funds, any membership dues.

(t) To expend local school activity funds, or other available school district funds, other than minimum education program funds, for the purposes prescribed under this paragraph. "Activity funds" shall mean all funds received by school officials in all school districts paid or collected to participate in any school activity, such activity being part of the school program and partially financed with public funds or supplemented by public funds. Activity funds may only be expended for any necessary expenses or travel costs incurred by students and their chaperones in attending any in-state or out-of-state school-related programs, conventions or seminars and/or any commodities, equipment or school supplies which the local school governing board, in their discretion, shall deem beneficial to the official or extracurricular programs of the district, including items which may subsequently become the personal property of individuals, including yearbooks, athletic apparel, book covers and trophies. The local school governing board shall be authorized and empowered to promulgate rules and regulations specifically designating for what purposes school activity funds may be expended, and what type of bookkeeping methods, procedures and auditing shall be utilized in accounting for such funds. The local school governing board shall provide (a) that such school activity funds be audited annually, or (b) that a financial statement for such school activity funds be prepared and spread upon the minutes of the board. The board may utilize the services of a certified public accountant, a public accountant, the State Department of Audit or its own personnel in preparing such audit or financial statement.

(t) To expend local school activity funds, or other available school district funds, other than minimum education program funds, for the purposes prescribed under this paragraph. "Activity funds" shall mean all funds received by school officials in all school districts paid or collected to participate in any school activity, such activity being part of the school program and partially financed with public funds or supplemented by public funds. The term "activity funds" shall not include any funds raised and/or expended by any organization unless deposited with existing activity funds, regardless of whether the funds were raised using school facilities. Organizations shall not be required to make any payment to any school for the use of any school facility if, in the discretion of the local school governing board, the organization's function shall be deemed to be beneficial to the official or extracurricular programs of the school. For the purposes of this provision, the term "organization" shall not include any organization subject to the control of the local school governing board. Activity funds may only be expended for any necessary expenses or travel costs, including advances, incurred by students and their chaperones in attending any in-state or out-of-state school-related programs, conventions or seminars and/or any commodities, equipment, travel expenses, purchased services or school supplies which the local school governing board, in their discretion, shall deem beneficial to the official or extracurricular programs of the district, including items which may subsequently become the personal property of individuals, including yearbooks, athletic apparel, book covers and trophies. Activity funds may be used to pay travel expenses of school district personnel. The local school governing board shall be authorized and empowered to promulgate rules and regulations specifically designating for what purposes school activity funds may be expended. The local school governing board shall provide (a) that such school activity funds shall be maintained and expended by the principal of the school generating

the funds in individual bank accounts, or (b) that such school activity funds shall be maintained and expended by the superintendent of schools in a central depository approved by the board. The local school governing board shall provide ~ that such school activity funds be audited annually. ~ The board may utilize the services of a certified public accountant or the State Department of Audit ~ in preparing such audit. ~ The State Auditor shall prescribe a uniform system of accounting and financial reporting for all school activity fund transactions to be implemented by July 1, 1986;

(u) To contract, on a shared savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as provided for in Section 31-7-14, not to exceed ten (10) years.

SOURCES: Laws, 1982, ch. 466, § 1; 1985, ch. 466, § 1; 1985, ch. 493, § 3, eff from and after July 1, 1985.

(u) To contract, on a shared savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as provided for in Section 31-7-14, not to exceed ten (10) years.

(v) To maintain accounts and issue pay certificates on school food service bank accounts; and

(w)(i) To lease a school building from an individual, partnership, nonprofit corporation or a private for-profit corporation for the use of such school district, and to expend funds therefor as may be available from any non-minimum program sources. The school board of the school district desiring to lease a school building shall declare by resolution that a need exists for a school building and that the school district cannot provide the necessary funds to pay the cost or its proportionate share of the cost of a school building required to meet the present needs. The resolution so adopted by the school board shall be published once each week for three (3) consecutive weeks in a newspaper having a general circulation in the school district involved, with the first publication thereof to be made not less than thirty (30) days prior to the date upon which the school board is to act on the question of leasing a school building. If no petition requesting an election is filed prior to such meeting as hereinafter provided, then the school board may, by resolution spread upon its minutes, proceed to lease a school building. If at any time prior to said meeting a petition signed by not less than

twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the school district involved shall be filed with the school board requesting that an election be called on the question, then the school board shall, not later than the next regular meeting, adopt a resolution calling an election to be held within such school district upon the question of authorizing the school board to lease a school building. Such election shall be called and held, and notice thereof shall be given, in the same manner for elections upon the questions of the issuance of the bonds of school districts, and the results thereof shall be certified to the school board. If at least three-fifths (3/5) of the qualified electors of the school district who voted in such election shall vote in favor of the leasing of a school building, then the school board shall proceed to lease a school building. The term of the lease contract shall not exceed twenty (20) years, and the total cost of such lease shall be either the amount of the lowest and best bid accepted by the school board after advertisement for bids or an amount not to exceed the current fair market value of the school building as determined by the averaging of at least two (2) appraisals by members of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers. The term "school building" as used in this item (w) shall be construed to mean any building or buildings used for classroom purposes in connection with the operation of schools and shall include the site therefor, necessary support facilities, and the equipment thereof and appurtenances thereto such as heating facilities, water supply, sewage disposal, landscaping, walks, drives and playgrounds. The term "lease" as used in this item (w)(i) may include a lease/purchase contract.

(ii) If two (2) or more school districts propose to enter into a lease contract jointly, then joint meetings of the school boards having control may be held but no action taken shall be binding on any such school district unless the question of leasing a school building is approved in

each participating school district under the procedure hereinabove set forth in item (w)(i). All of the provisions of item (w)(i) regarding the term and amount of the lease contract shall apply to the school boards of school districts acting jointly. Any lease contract executed by two (2) or more school districts as joint lessees shall set out the amount of the aggregate lease rental to be paid by each, which may be agreed upon, but there shall be no right of occupancy by any lessee unless the aggregate rental is paid as stipulated in the lease contract. All rights of joint lessees under the lease contract shall be in proportion to the amount of lease rental paid by each.

(x) To borrow such funds as may be reasonable and necessary from the federal government, the State of Mississippi or any political subdivision or entity thereof, or any other governmental agency, public interest corporation, or nonprofit entity established or operated to aid school districts in asbestos removal, to be repaid out of any non-minimum program funds; provided, however, that the grant of authority shall in no way be construed to require said boards of trustees to remove asbestos material or substances from any facilities under their control, nor shall there be any liability to said school districts or boards for the failure to so remove such asbestos materials.

(From and after July 1, 1987, this section shall read as follows:)

37-7-301. The school boards of all school districts shall have the following powers, authority and duties in addition to all others imposed or granted by law, to-wit:

(a) To organize and operate the schools of the district and to make such division between the high school grades and elementary grades as, in their judgment, will serve the best interests of the school;

(b) To introduce public school music, art, manual training and other special subjects into either the elementary or high school grades, as the board shall deem proper;

(c) To be the custodians of real and personal school property and to manage, control and care for same, both during the school term and during vacation;

(d) To have responsibility for the erection, repairing and equipping of school facilities and the making of necessary school improvements;

(e) To suspend or to expel a pupil for misconduct in the school, upon school buses, on the road to and from school, during recess or upon the school playgrounds, and to delegate such authority to the appropriate officials of the school district;

(f) To visit schools in the district, in their discretion, in a body for the purpose of determining what can be done for the improvement of the school in a general way;

(g) To support, within reasonable limits, the superintendent, administrative superintendent, principal and teachers where necessary for the proper discipline of the school;

(h) To exclude from the schools students with what appears to be infectious or contagious diseases; provided, however, such student may be allowed to return to school

upon presenting a certificate from a public health officer or duly licensed physician that the student is free from such disease;

(i) To require those vaccinations specified by the State Health Officer as provided in Section 41-23-37, Mississippi Code of 1972;

(j) To see that all necessary utilities and services are provided in the schools at all times when same are needed;

(k) To authorize the use of the school buildings and grounds for the holding of public meetings and gatherings of the people under such regulations as may be prescribed by said board;

(l) To prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of the schools, and to transact their business at regular and special meetings called and held in the manner provided by law;

(m) To maintain and operate all of the schools under their control for such length of time during the year as may be required;

(n) To enforce in the schools the courses of study and the use of the textbooks prescribed by the proper authorities;

(o) To make orders directed to the superintendent of schools or administrative superintendent for the issuance of pay certificates for lawful purposes on any available funds of the district and to have full control of the receipt, distribution, allotment and disbursement of all funds provided for the support and operation of the schools of such school district whether such funds be derived from state appropriations, local ad valorem tax collections, or otherwise;

(p) To select all school district personnel in the manner provided by law;

(q) To provide and regulate athletic programs and other school activities;

(r) To join, in their discretion, any association of school boards and other public school related organizations, and to pay from local funds other than minimum foundation funds, any membership dues;

(s) To expend local school activity funds, or other available school district funds, other than minimum education program funds, for the purposes prescribed under this paragraph. "Activity funds" shall mean all funds received by school officials in all school districts paid or collected to participate in any school activity, such activity being part of the school program and partially financed with public funds or supplemented by public funds. The term "activity funds" shall not include any funds raised and/or expended by any organization unless deposited with existing activity funds, regardless of whether the funds were raised using school facilities. Organizations shall not be required to make any payment to any school for the use of any school facility if, in the discretion of the local school governing board, the organization's function shall be deemed to be beneficial to the official or extracurricular programs of the school. For the purposes of this provision, the term "organization" shall not include any organization subject to the control of the local school governing board. Activity funds may only be expended for any necessary expenses or travel costs, including advances, incurred by students and their chaperones in attending any in-state or out-of-state school-related programs, conventions or seminars and/or any commodities, equipment, travel expenses, purchased services or school supplies which the local school governing board, in their discretion, shall deem beneficial to the official or extracurricular programs of the district, including items which may subsequently become the per-

sonal property of individuals, including yearbooks, athletic apparel, book covers and trophies. Activity funds may be used to pay travel expenses of school district personnel. The local school governing board shall be authorized and empowered to promulgate rules and regulations specifically designating for what purposes school activity funds may be expended. The local school governing board shall provide (a) that such school activity funds shall be maintained and expended by the principal of the school generating the funds in individual bank accounts, or (b) that such school activity funds shall be maintained and expended by the superintendent of schools in a central depository approved by the board. The local school governing board shall provide that such school activity funds be audited annually. The board may utilize the services of a certified public accountant or the State Department of Audit in preparing such audit. The State Auditor shall prescribe a uniform system of accounting and financial reporting for all school activity fund transactions to be implemented by July 1, 1986;

(t) To contract, on a shared savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as provided for in Section 31-7-14, not to exceed ten (10) years.

(u) To maintain accounts and issue pay certificates on school food service bank accounts; and

(v)(i) To lease a school building from an individual, partnership, nonprofit corporation or a private for-profit corporation for the use of such school district, and to expend funds therefor as may be available from any non-minimum program sources. The school board of the school district desiring to lease a school building shall declare by resolution that a need exists for a school building and that the school district cannot provide the necessary funds to pay the cost or its proportionate share of the cost of a school building required to meet the present needs. The

resolution so adopted by the school board shall be published once each week for three (3) consecutive weeks in a newspaper having a general circulation in the school district involved, with the first publication thereof to be made not less than thirty (30) days prior to the date upon which the school board is to act on the question of leasing a school building. If no petition requesting an election is filed prior to such meeting as hereinafter provided, then the school board may, by resolution spread upon its minutes, proceed to lease a school building. If at any time prior to said meeting a petition signed by not less than twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the school district involved shall be filed with the school board requesting that an election be called on the question, then the school board shall, not later than the next regular meeting, adopt a resolution calling an election to be held within such school district upon the question of authorizing the school board to lease a school building. Such election shall be called and held, and notice thereof shall be given, in the same manner for elections upon the questions of the issuance of the bonds of school districts, and the results thereof shall be certified to the school board. If at least three-fifths (3/5) of the qualified electors of the school district who voted in such election shall vote in favor of the leasing of a school building, then the school board shall proceed to lease a school building. The term of the lease contract shall not exceed twenty (20) years, and the total cost of such lease shall be either the amount of the lowest and best bid accepted by the school board after advertisement for bids or an amount not to exceed the current fair market value of the school building as determined by the averaging of at least two (2) appraisals by members of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers. The term "school building" as used in this item (v) shall be construed to mean any building or buildings used for classroom purposes in connection with

the operation of schools and shall include the site therefor, necessary support facilities, and the equipment thereof and appurtenances thereto such as heating facilities, water supply, sewage disposal, landscaping, walks, drives and playgrounds. The term "lease" as used in this item (v)(i) may include a lease/purchase contract.

(ii) If two (2) or more school districts propose to enter into a lease contract jointly, then joint meetings of the school board having control may be held but no action taken shall be binding on any such school district unless the question of leasing a school building is approved in each participating school district under the procedure hereinabove set forth in item (v)(i). All of the provisions of item (v)(i) regarding the term and amount of the lease contract shall apply to the school boards of school districts acting jointly. Any lease contract executed by two (2) or more school districts as joint lessees shall set out the amount of the aggregate lease rental to be paid by each, which may be agreed upon, but there shall be no right of occupancy by any lessee unless the aggregate rental is paid as stipulated in the lease contract. All rights of joint lessees under the lease contract shall be in proportion to the amount of lease rental paid by each.

(w) To borrow such funds as may be reasonable and necessary from the federal government, the State of Mississippi or any political subdivision or entity thereof, or any other governmental agency, public interest corporation, or nonprofit entity established or operated to aid school districts in asbestos removal, to be repaid out of any non-minimum program funds; provided, however, that the grant of authority shall in no way be construed to require said boards of trustees to remove asbestos material or substances from any facilities under their control, nor shall there be any liability to said school districts or boards for the failure to so remove such asbestos materials.

(x) To contract, on a shared savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as provided for in Section 31-7-14, not to exceed ten (10) years;

(y) To employ and fix the duties and compensation of such clerical help, other non-instructional personnel deemed necessary pursuant to the recommendation of the superintendent of schools or the administrative superintendent;

(z) To employ and fix the duties and compensation of such legal counsel as deemed necessary; and

(aa) Subject to rules and regulations of the State Board of Education, to purchase, own and operate trucks, vans and other motor vehicles, which shall bear the proper identification required by law.

§ 37-7-409. Funds for joint construction of buildings or operation of schools.

(1) When any school districts shall be authorized to unite, join and cooperate in the construction, erecting and equipping of a joint school building or school facility or in the joint operation of a school erected, constructed and equipped entirely by one of such districts, any school district so authorized may, with the prior consent and approval of the state educational finance commission, expend in the construction, erecting and equipping of such joint school building or the school building which is to be jointly operated any available state public school building funds, or any available funds derived from bonds issued by such school district for such purpose, or any other funds which are otherwise available to such school district for such purpose, as is set forth and stipulated in the agreement entered into between the school districts involved. Except as is herein specifically provided all provisions of law relative to the construction, erecting and equipping of school buildings, the acquisition of land therefor, and the expenditure of funds for such purposes, shall be fully applicable to any joint school building which has been or is to be constructed, erected and equipped or which is to be operated jointly pursuant to an agreement entered into under the provisions of section 37-7-405.

SECTION 25. Section 37-7-409, Mississippi Code of 1972, is amended as follows:

37-7-409. (1) When any school districts shall be authorized to unite, join and cooperate in the construction, erecting and equipping of a joint school building or school facility

or in the joint operation of a school erected, constructed and equipped entirely by one of such districts, any school district so authorized may, with the prior consent and approval of the State Board of Education, expend in the construction, erecting and equipping of such joint school building or the school building which is to be jointly operated any available state public school building funds, or any available funds derived from bonds issued by such school district for such purpose, or any other funds which are otherwise available to such school district for such purpose, as is set forth and stipulated in the agreement entered into between the school districts involved. Except as is herein specifically provided all provisions of law relative to the construction, erecting and equipping of school buildings, the acquisition of land therefor, and the expenditure of funds for such purposes, shall be fully applicable to any joint school building which has been or is to be constructed, erected and equipped or which is to be operated jointly pursuant to an agreement entered into under the provisions of Section 37-7-405.

(2) When a contract is made and entered into for the construction, erecting and equipping of joint school facilities or the joint operation of school facilities erected, constructed and equipped entirely by one of such districts, as provided in section 37-7-405, and where such contract has been approved by the state educational finance commission, then any funds which are available for the lawful operating and incidental expenses of a school district may be expended by such school district as provided and stipulated in the agreement entered into between the school districts involved (including, but not limited to, funds for payment of tuition, funds payable as a rental upon the use of the building and equipment, and funds for maintenance and incidental costs of operation). The board of supervisors, upon receipt of a certified copy of an order adopted by the board of trustees of any school district in the county requesting same, or the governing authorities of the municipality, upon receipt of a certified copy of an order adopted by the board of trustees of a municipal separate school district requesting same, shall at the same time and in the same manner as other ad valorem taxes are levied, levy an annual tax in the amount fixed in such order as may be required to meet any monetary obligation incurred under such contract. Notwithstanding any statute to the contrary, such number of mills as is necessary to defray any such contractual obligation shall be levied. However, this provision shall in no way be construed to increase the number of mills now reimbursable under the homestead exemption laws of the State of Mississippi

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(2) When a contract is made and entered into for the construction, erecting and equipping of joint school facilities or the joint operation of school facilities erected, constructed and equipped entirely by one of such districts, as provided in Section 37-7-405, and where such contract has been approved by the State Board of Education, then any funds which are available for the lawful operating and incidental expenses of a school district may be expended by such school district as provided and stipulated in the agreement entered into between the school districts involved (including, but not limited to, funds for payment of tuition, funds payable as a rental upon the use of the building and equipment, and funds for maintenance and incidental costs of operation). The levying authority for the school district, as defined in Section 37-57-1, upon receipt of a certified copy of an order adopted by the school board of the school district in the county requesting same, shall at the same time and in the same manner as other ad valorem taxes are levied, levy an annual tax in the amount fixed in such order as may be required to meet any monetary obligation incurred under such contract. Notwithstanding any statute to the contrary, such number of mills as is necessary to defray any such contractual obligation shall be levied. However, this provision shall in no way be construed to increase the number of mills now reimbursable under the homestead exemption laws of the State of Mississippi.

(3) Before levying any taxes under the provisions of this section, which levy would exceed the limitations otherwise provided upon the number of mills which may be levied for school purposes, the board of supervisors shall adopt a resolution declaring its intention so to do, stating the amount of millage to be levied and the purpose for which the proceeds are to be used, and the date upon which said board of supervisors proposes to make such levy. Such resolution shall be published once a week for not less than three consecutive weeks, in at least one newspaper published in the county. The first publication of such resolution shall be made not less than twenty-one days prior to the date fixed in such resolution for the levying of taxes, and the last publication shall be made not more than seven days prior to such date. If within fifteen days after the final publication of said resolution, a petition signed by at least twenty percent of the qualified electors of said county, requesting an election on the proposition of levying such additional taxes for school purposes is filed with the clerk of the board of supervisors, such levy shall not be made until an election shall be held to determine whether or not a majority of qualified electors of said county shall favor the additional levy for school purposes. If a majority of the qualified electors of said county voting in such election approves the levying of the additional taxes, then the levy shall be made within the manner, form and time as required by law. If no such petition if filed with the clerk of the board of supervisors, then said levy shall be made by the board of supervisors in the manner, form and time as required by law. If any election is held under the provisions of this section, said

election shall be under the supervision of the county election commission in the manner, form and time as required by law for conducting general elections in this state.

SOURCES: Codes, 1942, § 6328-74; Laws, 1956, ch. 266, § 4; 1960, ch. 301, § 3; 1968, ch. 386, eff from and after passage (approved June 24, 1968).

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(3) Before levying any taxes under the provisions of this section, which levy would exceed the limitations otherwise provided for school purposes, the levying authority for the school district, as defined in Section 37-57-1, shall adopt a resolution declaring its intention so to do, stating the amount of millage to be levied and the purpose for which the proceeds are to be used, and the date upon which it proposes to make such levy. Such resolution shall be published once a week for not less than three (3) consecutive weeks, in at least one (1) newspaper having general circulation in the school district. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the levying of taxes, and the last publication shall be made not more than seven (7) days prior to such date. If within fifteen (15) days after the final publication of said resolution, a petition signed by the lesser of fifteen hundred (1500) or twenty percent (20%) of the qualified electors of said school district, requesting an election on the proposition of levying such additional taxes for school purposes is filed with the clerk of the board of supervisors or the clerk of the municipality, as the case may be, such levy shall not be made until an election shall be held to determine whether or not three-fifths (3/5) of qualified electors of said school district shall favor the additional levy for school purposes. If three-fifths (3/5) of the qualified electors of said school district voting in such election approves the levying of the

additional taxes, then the levy shall be made within the manner, form and time as required by law. If no such petition is filed with the clerk as herein provided, then said levy shall be made by the levying authority in the manner, form and time as required by law. If any election is held under the provisions of this section, said election shall be under the supervision of the county or municipal election commission, as the case may be, in the manner, form and time as required by law for conducting general elections in this state.

SECTION 47. Sections 37-7-601, 37-7-603, 37-7-605, 37-7-607, 37-7-609, 37-7-611, 37-7-613, 37-7-615, 37-7-617, 37-7-619, 37-7-621, 37-7-623, 37-7-625, 37-7-627, 37-7-629, 37-7-631, 37-7-633, 37-7-635, 37-7-637, 37-7-639, 37-7-641, 37-7-643 and 37-7-645, Mississippi Code of 1972, which provide for the creation and operation of municipal separate school districts, are hereby repealed.

§37-7-103. Abolition, alteration or creation of districts by county board of education.

After school districts have been reconstituted and created in the manner prescribed by Article 1 of this chapter, the county board of education shall have full jurisdiction, power, and authority, at any regular meeting thereof or at any special meeting called for that purpose, to abolish any existing district other than a municipal separate school district, to change or alter the boundaries of any such district, to create any new districts, and to otherwise create, alter, or abolish any of the school districts of such county, other than the municipal separate school districts. In addition thereto, with the consent of the board of trustees of the municipal separate school district involved, the county board of education may add to such municipal separate school districts any part of the county adjoining same, and with the consent of the board of trustees of the municipal separate school district involved, the county board may detach territory from such municipal separate school district and annex same to an adjoining district in the county school system.

SOURCES: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6, eff from and after July 1, 1954.

SECTION 52. Section 37-7-103, Mississippi Code of 1972, is amended as follows:

37-7-103. From and after July 1, 1987, the school board of any school district shall have full jurisdiction, power and authority, at any regular meeting thereof or at any special meeting called for that purpose, to abolish such existing district, or to reorganize, change or alter the

boundaries of any such district. In addition thereto, with the consent of the school board of the school district involved, the school board may add to such school district any part of the school district adjoining same, and with the consent of the school board of the school district involved, may detach territory from such school district and annex same to an adjoining district.

§37-7-105. Procedure to abolish, alter or create a district in absence of petition filed by electorate.

In cases where the county board of education abolishes, alters, or creates a school district without a petition therefor as is otherwise provided in sections 37-7-107, 37-7-109, the county board of education shall publish the order creating, altering, or abolishing such district or districts in some newspaper published and having a general circulation in such county once each week for three consecutive weeks, which said order shall be duly certified by the president of said county board of education. If no newspaper be published in said county, then such order shall be published for the required time in some newspaper having a general circulation therein, and, in addition, a copy of said order shall be posted for the required time at three public places in the county. The order so published shall contain a provision giving notice that said order shall become final thirty days after the first publication of said notice unless a petition is filed protesting against same within such time. In the event no such petition be filed, the said order shall become final at said time. However, in the event twenty per cent of the qualified electors of any school district created, altered, or abolished by such order shall file a petition with the county board of education, within thirty days after the first publication of said notice, protesting against the creation, alteration, or abolition of such district, then an election shall be called and held, on order of the county board of education, by the county election commission, after publication of legal notice of such election, which said election shall be held within thirty days after the first publication of

the notice of such election. At such election the question shall be submitted to the qualified electors of the district or districts affected and from which a petition is filed as to whether or not such district or districts shall be created, altered, or abolished as provided in the said order of the county board of education. If a majority of those voting in said election in each district affected and from which a petition is filed shall vote in favor of the order of the county board of education then such order shall become final. If a majority of those voting in said election in any district from which a petition is filed shall vote against the order of the county board of education then such order shall be void and of no effect and no further attempt to make the proposed change in such district shall be made for a period of at least two years after the date of said election.

SOURCES: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6, eff from and after July 1, 1954.

SECTION 53. Section 37-7-105, Mississippi Code of 1972, is amended as follows:

37-7-105. In cases where the school board ✓ abolishes, alters or reorganizes a school district without a petition therefor as is otherwise provided in Sections 37-7-107 and 37-7-109, the school board ✓ shall publish the order reorganizing, altering or abolishing such district or districts in some newspaper published and having a general circulation in such district(s) once each week for three (3) consecutive weeks, which said order shall be duly certified by the president of said school board. ✓ If no newspaper be published in said school district, then such order shall be published for the required time in some newspaper having a

general circulation therein, and, in addition, a copy of said order shall be posted for the required time at three (3) public places in the school district. The order so published shall contain a provision giving notice that said order shall become final thirty (30) days after the first publication of said notice unless a petition is filed protesting against same within such time. In the event no such petition be filed, the said order shall become final at said time. However, in the event twenty percent (20%) of the qualified electors of any school district reorganized, altered or abolished by such order shall file a petition with the school board, ✓ within thirty (30) days after the first publication of said notice, protesting against the reorganization, alteration or abolition of such district, then an election shall be called and held, on order of the school board, ✓ by the county election commission(s), after publication of legal notice of such election, which said election shall be held within thirty (30) days after the first publication of the notice of such election. At such election the question shall be submitted to the qualified electors of the district or districts affected and from which a petition is filed as to whether or not such district or districts shall be reorganized, altered or abolished as provided in the said order of the school board. ✓ If a majority of those voting in said election in each district affected and from which a petition is filed shall vote in favor of the order of the school board ✓ then such order shall become final. If a majority of those voting in said election in any district from which a petition is filed shall vote against the order of the school board ✓ then such order shall be void and of no effect and no further attempt to make the proposed change in such district shall be made for a period of at least two (2) years after the date of said election.

§37-7-107. Procedure to abolish district pursuant to petition filed by electorate.

If a petition signed by two-thirds of the qualified electors of an existing school district shall be filed with the county board of education requesting that such district be abolished, then the county board of education shall enter an order abolishing such school district. Such order shall become final without publication thereof upon such date as may be fixed by the county board of education but not later than the first day of July next succeeding the date of such order.

SECTION 54. Section 37-7-107, Mississippi Code of 1972, is amended as follows:

37-7-107. If a petition signed by two-thirds (2/3) of the qualified electors of an existing school district shall be filed with the school board ✓ requesting that such district be abolished, then the school board ✓ shall enter an order abolishing such school district. Such order shall become final without publication thereof upon such date as may be fixed by the school board ✓ but not later than July 1 next succeeding the date of such order.

§37-7-109. Procedure to alter district pursuant to petition filed by electorate.

If a petition signed by a majority of the qualified electors of specifically described territory of an existing school district shall be filed with the county board of education requesting that said described territory be taken from such existing district and annexed to an adjacent district, the county board of education, after consideration thereof, and with the consent and approval of the board of trustees of the district to which such territory is to be annexed, shall have the power and authority, in its discretion, to take such territory from the existing district and annex same to the adjacent district. However, before doing so, the county board of education must find and determine that the taking of the territory from the existing school district will not seriously interfere with or impair the efficiency of such school district, and all orders adopted under the provisions of this section shall be invalid unless such finding and determination be made. Any order adopted under the provisions of this section shall become final without publication thereof upon such date as may be fixed by the county board of education but not later than the first day of July next succeeding the date of such order. The taking of territory from existing school districts under the provisions of this section shall not release the property in such territory from assessment and liability for the payment of the oustanding bonds or other indebtedness of the district from which the territory is taken and it shall be the duty of the board of supervisors to continue to levy taxes on such territory in an amount sufficient to pay such territory's pro rata part of all outstanding bonds or other indebt-

edness existing at the time the territory is taken from such district. In addition thereto, the territory involved shall become liable for its pro rata part of the outstanding bonds or other indebtedness of the district to which it is annexed and taxes shall be levied thereon for the payment thereof to the same extent as taxes are levied upon the other territory of such district.

SECTION 55. Section 37-7-109, Mississippi Code of 1972, is amended as follows:

37-7-109. If a petition signed by a majority of the qualified electors of specifically described territory of an existing school district shall be filed with the school board ✓ requesting that said described territory be taken from such existing district and annexed to an adjacent district, or reorganized into a new school district, the said school board, ✓ after consideration thereof, and with the consent and approval of the school board ✓ of the district to which such territory is to be annexed, if such be the case, shall have the power and authority, in its discretion, to take such territory from the existing district and annex same to the adjacent district, or to create a new school district of such specifically described territory. However, before doing so, the school board ✓ must find and determine that the taking of the territory from the existing school district will not seriously interfere with or impair the efficiency of such school district, and all orders adopted under the provisions of this section shall be invalid unless such finding and determination be made. Any order adopted under the provisions of this section shall become final without publication thereof upon such date as may be fixed by the school board but not later than the first day of July next succeeding the date of such order. The taking of territory from existing school districts under the provisions of this section shall not release the property in

such territory from assessment and liability for the payment of the oustanding bonds or other indebtedness of the district from which the territory is taken and it shall be the duty of the board of supervisors to continue to levy taxes on such territory in an amount sufficient to pay such territory's pro rata part of all outstanding bonds or other indebtedness existing at the time the territory is taken from such district. In addition thereto, the territory involved shall become liable for its pro rata part of the outstanding bonds or other indebtedness of the district to which it is annexed and taxes shall be levied thereon for the payment thereof to the same extent as taxes are levied upon the other territory of such district.

§37-7-111. Effect of abolition on indebtedness of district; territory of district shall be annexed to another district.

When any school district is abolished under the provisions of sections 37-7-105, 37-7-107, the abolition thereof shall not impair or release the property of such school district from liability for the payment of the bonds or other indebtedness of such district and it shall be the duty of the board of supervisors of said county to levy taxes on the property of said district so abolished from year to year according to the terms of such indebtedness until same shall be fully paid. No existing school district shall be abolished unless the territory comprising such district shall be annexed to another district by the county board of education in the same order abolishing the former district.

SOURCES: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6, eff from and after July 1, 1954.

SECTION 56. Section 37-7-111, Mississippi Code of 1972, is amended as follows:

37-7-111. When any school district is abolished or altered under the provisions of this act, the abolition or alteration thereof shall not impair or release the property of such school district from liability for the payment of the bonds or other indebtedness of such district and it shall be the duty of the board of supervisors of said county to levy taxes on the property of said district so abolished or altered from year to year according to the terms of such indebtedness until same shall be fully paid. No existing school district shall be abolished unless the territory com-

prising such district shall be annexed to another district in the same order abolishing the former district.

§37-7-113. Necessity of approval by state educational finance commission.

Notwithstanding any of the foregoing provisions of sections 37-7-103 to 37-7-111, it is hereby expressly provided that no order of the county board of education creating, abolishing, or altering any school district, whether same be taken with or without a petition therefor, shall be final unless and until said proposed creation, alteration, or abolition shall be submitted to and approved by the state educational finance commission. In the event the proposed action shall be disapproved by the state educational finance commission, the same shall be void and of no effect. In the event of the filing of any petitions with the county board of education under the provisions of said sections, the county board of education shall verify same and make a determination of whether same are signed by the requisite number of qualified electors. The finding of the county board of education upon such question shall be final and conclusive for the purpose of the submission of said matter to the state educational finance commission and the approval or disapproval of the action by said commission.

SOURCES: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6, eff from and after July 1, 1954.

SECTION 57. Section 37-7-113, Mississippi Code of 1972, is amended as follows:

37-7-113. Notwithstanding any of the foregoing provisions, ✓ it is hereby expressly provided that no order of the school board ✓ reorganizing, abolishing or altering any school district, whether same be taken with or without a

petition therefor, shall be final unless and until said proposed reorganization, alteration or abolition shall be submitted to and approved by the State Board of Education. In the event the proposed action shall be disapproved by the State Board of Education, the same shall be void and of no effect. In the event of the filing of any petitions with the school board ✓ under the provisions of said sections, the school board ✓ shall verify same and make a determination of whether same are signed by the requisite number of qualified electors. The finding of the school board ✓ upon such question shall be final and conclusive for the purpose of the submission of said matter to the State Board of Education and the approval or disapproval of the action by said board.

§37-41-95. Manner of issuance and form thereof.

All such notes issued by a county shall be signed by the president of the board of supervisors and countersigned by the clerk of the board of supervisors, and the seal of the county shall be impressed on each note as it is issued. All notes issued for a municipal separate school district or special municipal separate school district shall be signed by the mayor of the municipality and shall be countersigned by the clerk of the municipality, and the seal of the municipality shall be affixed thereto. The interest on said notes may be evidenced by proper coupons attached thereto and such coupons may bear only the facsimile signatures of the president of the board of supervisors and the clerk thereof, or the mayor of the municipality and the clerk of the municipality, as the case may be. Such notes shall be issued in such form and in such denominations as the board of supervisors or the governing authorities of the municipality shall determine. All of said notes shall be registered by the clerk of the board of supervisors or the clerk of the municipality in a book kept by him in his office for that purpose.

Where bonds are issued by the board of supervisors or the governing authorities of the municipality, as the case may be, the manner of issuance and the form thereof shall be in compliance with the provisions of sections 19-9-1 through 19-9-31, or sections 21-33-301 through 21-33-329, whichever shall be applicable.

SOURCES: Laws, 1982, ch. 354, § 26, eff from and after July 1, 1982.

SECTION 153. Section 37-41-95, Mississippi Code of 1972, is amended as follows:

37-41-95. All such notes issued by a school district shall be signed by the president of the school board and countersigned by the superintendent of schools, and the seal of the school district shall be impressed on each note as it is issued. The interest on said notes may be evidenced by proper coupons attached thereto and such coupons may bear only the facsimile signatures of the president of the school board and the superintendent of schools. Such notes shall be issued in such form and in such denominations as the school board shall determine. All of said notes shall be registered by the superintendent of schools in a book kept by him in his office for that purpose.

Where bonds are issued by the school board the manner of issuance and the form thereof shall be in compliance with the provisions of Sections 37-59-1 through 37-59-45, except that such bonds may be issued upon approval of three-fifths (3/5) of the electors voting in any election held for the purpose of issuing such bonds.

§37-57-105. Levy by board of supervisors for support of special municipal separate school district; levy to cover expenses, funds for which are not provided by minimum program fund allotments.

(1) In addition to the taxes levied under sections 37-7-739 and 37-57-3, the county board of supervisors, upon receipt of a certified copy of an order adopted by the board of trustees of any special municipal separate school district requesting a tax levy for the support of the school district, and the municipal governing authorities, upon receipt of a certified copy of an order adopted by the board of trustees of any municipal separate school district requesting a tax levy for the support of the school district, shall, at the same time and in the same manner as other ad valorem taxes are levied, levy an annual ad valorem tax in the amount fixed in such order upon all of the taxable property of such school district; however, such mandatory levy, including the taxes levied under sections 37-7-739 and 37-57-3, shall not exceed the millage limitation set forth in section 37-57-107, but the county board of supervisors and the municipal governing authorities, respectively, may, in their discretion, levy an additional ad valorem tax for the support of such school districts which shall not be subject to any millage limitation, but the cumulative ad valorem taxes levied for the support of such school districts shall be subject to the ten percent (10%) increase limitation set forth in section 37-57-107. The proceeds of such tax levy shall be placed in the respective county or municipal depository to the credit of the school district and shall be expended in the manner provided by law for the purpose of supplementing teachers' salaries, ex-

tending school terms, purchasing furniture, supplies and materials, and for all other lawful operating and incidental expenses of such school district, funds for which are not provided by minimum program fund allotments.

(2) In addition to the taxes levied under section 37-57-1, the county board of supervisors, upon receipt of a certified copy of an order adopted by the board of trustees of any school district in the county school system requesting a tax levy for the support of the school district, may, at the same time and in the same manner as other ad valorem taxes are levied, levy an annual ad valorem tax in the amount fixed in such order upon all of the taxable property of such school district. The proceeds of such tax levy shall be placed in the county depository to the credit of the school district and shall be expended in the manner provided by law for the purpose of supplementing teachers' salaries, extending school terms, purchasing furniture, supplies and materials, and for all other lawful operating and incidental expenses of such school district, funds for which are not provided by minimum program fund allotments.

When the tax is levied in a county which is the home county of a line school district or upon the territory of any school district located in two (2) or more counties, the order of the county board of education or board of trustees, as the case may be, requesting the levying of such tax shall be certified to the board of supervisors of each of the counties involved, and each of the board of supervisors shall levy the tax in the manner specified herein. The taxes so levied shall be collected by the tax collector of each of the counties involved and remitted by the tax collec-

tor to the county depository of the home county to the credit of the school district involved.

SOURCES: Laws, 1983, ch. 471, § 23, eff from and after July 1, 1983.

SECTION 163. Section 37-57-105, Mississippi Code of 1972, is amended as follows:

37-57-105. In addition to the taxes levied under Section 37-57-1, the levying authority for the school district, as defined in Section 37-57-1, upon receipt of a certified copy of an order adopted by the school board of the school district ✓ requesting an ad valorem tax effort in dollars for the support of the school district, shall, at the same time and in the same manner as other ad valorem taxes are levied, levy an annual ad valorem tax in the amount fixed in such order upon all of the taxable property of such school district. In making such levy, the levying authority shall make allowance for anticipated delinquencies and costs of collection so that the net amount of money to be produced by such collection so that the net amount of money to be produced by such levy shall be equal to the amount which is requested by said school board. The proceeds of such tax levy, excluding levies for the payment of the principal of and interest on school bonds or notes, shall be placed in the school depository to the credit of the school district and shall be expended in the manner provided by law for the purpose of supplementing teachers' salaries, extending school terms, purchasing furniture, supplies and materials, and for all other lawful operating and incidental expenses of such school district, funds for which are not provided by minimum program fund allotments.

When the tax is levied ✓ upon the territory of any school district located in two (2) or more counties, the order of the school board ✓ requesting the levying of such tax shall be certified to the levying authority of each of the counties

involved, and each of the levying authorities shall levy the tax in the manner specified herein. The taxes so levied shall be collected by the tax collector of the levying authority involved and remitted by the tax collector to the school depository of the home county to the credit of the school district involved as provided above.

The aggregate receipts from ad valorem taxes levied for school district purposes pursuant to this section and Sections 37-57-1 and 37-57-3 shall be subject to the increased limitation under Section 37-57-107; however, if the ad valorem tax effort in dollars requested by the school district for the fiscal year exceeds the next preceding fiscal year's ad valorem tax effort in dollars by more than seven percent (7%) but not more than ten percent (10%), then the school board shall publish notice thereof once each week for three (3) consecutive weeks in a newspaper having general circulation in the school district involved, with the first publication thereof to be made not less than thirty (30) days prior to the May regular meeting of the school board. If at any time prior to said meeting a petition signed by not less than twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the school district involved shall be filed with the school board requesting that an election be called on the question of exceeding the next preceding fiscal year's ad valorem tax effort in dollars by more than seven percent (7%) but not more than ten percent (10%), then the school board shall, not later than the next regular meeting, adopt a resolution calling an election to be held within such school district upon such question. The election shall be called and held, and notice thereof shall be given, in the same manner for elections upon the questions of the issuance of the bonds of school districts, and the results thereof shall be certified to the school board. The ballot shall contain the language "For the School Tax Increase Over Seven Percent (7%)" and "Against the School Tax Increase Over Seven Percent (7%)." If a majority of the qualified electors

of the school district who voted in such election shall vote in favor of the question, then the stated increase requested by the school board shall be approved. For the purposes of this paragraph, the revenue sources excluded from the increase limitation under Section 37-57-107 shall also be excluded from the limitation described herein in the same manner as they are excluded under Section 37-57-107.

§ 37-57-107. Limitation on increases of taxes levied for school district purposes; disposition of excess revenues; ceiling on ad valorem taxes for support of municipal separate district and special municipal district.

(1) Beginning with the tax levy for the 1984 fiscal year and for each fiscal year thereafter, the aggregate receipts from taxes levied for school district purposes pursuant to section 37-57-105 and sections 37-7-739, 37-57-1 and 37-57-3 shall not exceed the aggregate receipts from those sources during the next preceding fiscal year plus an increase not to exceed ten percent (10%). The additional revenue from the ad valorem tax on any newly constructed properties or any existing properties added to the tax rolls or any properties previously exempt, which were not assessed in the next preceding year may be excluded from the ten percent (10%) increase limitation set forth herein. Taxed levied for payment of principal of and interest on general obligation school bonds issued heretofore or hereafter shall be excluded from the ten percent (10%) increase limitation set forth herein. Any additional millage levied to fund any new program mandated by the legislature shall be excluded from the limitation for the first year of the levy and included within such limitation in any year thereafter.

The ten percent (10%) increase limitation prescribed in this subsection may be increased an additional amount only when the county board of supervisors or municipal governing authorities, as the case may be, has determined the need for additional revenues and has held an election on the question of raising the limitation prescribed in this subsection. The limitation may be increased only if a majority of the qualified electors

in the school district vote in the election and if a majority of those voting in the election shall vote for the proposed increase. The resolution, notice and manner of holding the election shall be as prescribed by law for the holding of elections for the issuance of bonds by the respective county board of supervisors or municipal governing authorities. Revenues collected for the fiscal year in excess of the ten percent (10%) increase limitation pursuant to an election shall be included in the tax base for the purpose of determining aggregate receipts for which the ten percent (10%) increase limitation applies for subsequent fiscal years.

Except as otherwise provided for excess revenues generated pursuant to an election, if revenues collected as the result of the taxes levied for the fiscal year pursuant to this section and sections 37-7-739, 37-51-1 and 37-57-3 exceed the increase limitation, then it shall be the mandatory duty of the board of trustees of the school district to deposit such excess receipts over and above the increase limitation into a special account and credit it to the fund for which the levy was made. It will be the further duty of such board to hold said funds and invest the same as authorized by law. Such excess funds shall be calculated in the budgets for the school districts for the purpose for which such levies were made, for the succeeding fiscal year. Taxes imposed for the succeeding year shall be reduced by the amount of excess funds available. Under no circumstances shall such excess funds be expended during the fiscal year in which such excess funds are collected.

(2) Ad valorem taxes levied by the county board of supervisors for the support of any special mu-

nicipal separate school district pursuant to section 37-57-105 and section 37-7-739, and ad valorem taxes levied by the municipal governing authorities for the support of any municipal separate school district pursuant to section 37-57-105 and section 37-57-3, shall not exceed twenty-eight (28) mills for each school district, unless otherwise provided by section 37-57-105.

SOURCES: Law, 1983, ch. 471, § 24, eff from and after July 1, 1983.

SECTION 164. Section 37-57-107, Mississippi Code of 1972, is amended as follows:

37-57-107. ✓ Beginning with the tax levy for the 1987 fiscal year and for each fiscal year thereafter, the aggregate receipts from taxes levied for school district purposes pursuant to Sections 37-57-105 and ✓ 37-57-1 ✓ shall not exceed the aggregate receipts from those sources during the next preceding fiscal year plus an increase not to exceed ten percent (10%). The additional revenue from the ad valorem tax on any newly constructed properties or any existing properties added to the tax rolls or any properties previously exempt which were not assessed in the next preceding year may be excluded from the ten percent (10%) increase limitation set forth herein. Taxes levied for payment of principal of and interest on general obligation school bonds issued heretofore or hereafter shall be excluded from the ten percent (10%) increase limitation set forth herein. Any additional millage levied to fund any new program mandated by the Legislature shall be excluded from the limitation for the first year of the levy and included within such limitation in any year thereafter. For the purposes of this subsection, the term "new program" shall include, but shall not be limited to, the Early Childhood Education Program required to commence with the 1986-1987 school year as provided by Section 37-21-7,

and any additional millage levied and the revenue generated therefrom, which is excluded from the limitation for the first year of the levy, to support the mandated Early Childhood Education Program shall be specified on the minutes of the school board and of the governing body making such tax levy.

The ten percent (10%) increase limitation prescribed in this section may be increased an additional amount only when the school board has determined the need for additional revenues and has held an election on the question of raising the limitation prescribed in this section. The limitation may be increased only if three-fifths ($^3/_5$) of those ✓ voting in the election shall vote for the proposed increase. The resolution, notice and manner of holding the election shall be as prescribed by law for the holding of elections for the issuance of bonds by the respective school boards. Revenues collected for the fiscal year in excess of the ten percent (10%) increase limitation pursuant to an election shall be included in the tax base for the purpose of determining aggregate receipts for which the ten percent (10%) increase limitation applies for subsequent fiscal years.

Except as otherwise provided for excess revenues generated pursuant to an election, if revenues collected as the result of the taxes levied for the fiscal year pursuant to this section and Sections ✓ 37-57-1 ✓ exceed the increase limitation, then it shall be the mandatory duty of the school board of the school district to deposit such excess receipts over and above the increase limitation into a special account and credit it to the fund for which the levy was made. It will be the further duty of such board to hold said funds and invest the same as authorized by law. Such excess funds shall be calculated in the budgets for the school districts for the purpose for which such levies were made, for the succeeding fiscal year. Taxes imposed for the succeeding year shall be reduced by the amount of

excess funds available. Under no circumstances shall such excess funds be expended during the fiscal year in which such excess funds are collected.

§ 37-59-11. Calling of election on issuance of bonds.

Whenever either a certified copy of a resolution adopted by the board of trustees of a school district, or a petition signed by not less than ten per centum of the qualified electors of a school district, fixing the maximum amount of such bonds and the purpose or purposes, for which they are to be issued, shall be filed with the board of supervisors of the county or the governing authorities of the municipality, as the case may be, requesting that an election be called to determine whether or not the bonds of such school district shall be issued for any of the purposes enumerated in section 37-59-3, the board of supervisors of the county or the governing authorities of the municipality, as the case may be, within sixty days after receipt thereof, shall adopt a resolution calling an election to be held within such school district for the purpose of submitting to the qualified electors thereof the question of the issuance of bonds in the amount and for the purpose or purposes as set forth in such resolution or petition. The resolution calling such election shall designate the date upon which the election shall be held and the place or places within such district at which such election shall be held, which place or places may or may not be the school house or school houses in such district.

SOURCES: Codes, 1942, § 6532-04; Laws, 1950, ch. 231, § 4, eff from and after July 1, 1950.

SECTION 170. Section 37-59-11, Mississippi Code of 1972, is amended as follows:

(Until June 30, 1987, Section 37-59-11 shall read as follows:)

37-59-11. (1) Before any money shall be borrowed under the provisions of this act, the school board of the school district shall adopt a resolution declaring the necessity for borrowing such money, declaring its intention to issue the negotiable bonds of the school district as evidence of same. The resolution shall also set forth the amount of the indebtedness to be incurred and the purpose or purposes for which the money so borrowed is to be expended, including the approximate cost of the alterations, additions and repairs to be made.

(2) The resolution so adopted by the school board shall be published once each week for three (3) consecutive weeks in at least one (1) newspaper published in the school district involved, with the first publication thereof to be made not less than twenty-one (21) days prior to the date upon which the school board is to take final action upon the question of authorizing the borrowing of said money. If no newspaper is published in such school district, then such notice shall be given by publishing the same for the required time in some newspaper having a general circulation in said school district. If no peitition requesting an election is filed prior to such meeting as is hereinafter provided, then the school board shall, at said meeting, by resolution spread upon its minutes, give final approval to the borrowing of said money and shall authorize the issuance of negotiable bonds for the school district by the board of supervisors or the governing authorities of the municipality, as the case may be.

(3) If at any time prior to said meeting a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the school district involved shall be filed with the school board requesting that an election be called on the question of incurring said indebtedness, then the school board shall adopt a resolution

calling an election to be held within such school district upon the question of the incurring of said indebtedness for the purposes and in the amount requested. Such election shall be called and held, and notice thereof shall be given, as provided in Sections 37-59-13 and 37-59-15.

(From and after July 1, 1987, Section 37-59-11 shall read as follows:)

37-59-11. (1) Before any money shall be borrowed under the provisions of this act, the school board of the school district shall adopt a resolution declaring the necessity for borrowing such money, declaring its intention to borrow such money and to issue the negotiable bonds of the school district as evidence of same, specifying the amount to be so borrowed, and how such indebtedness is to be evidenced. Such resolution shall also set forth the nature and approximate cost of the alterations, additions and repairs to be made, and shall declare in said resolution that no funds are available in the school funds of the district or from any other source with which to make such repairs, alterations, additions, purchases, erections or improvements.

(2) Whenever a resolution is adopted by the school board as provided in subsection (1), or a petition signed by not less than ten percent (10%) of the qualified electors of a school district, fixing the maximum amount of such school bonds and the purpose or purposes for which they are to be issued, the school board shall adopt a resolution calling an election to be held within such school district for the purpose of submitting to the qualified electors thereof the question of the issuance of bonds in the amount and for the purpose or purposes as set forth in such resolution or petition. The resolution calling such election shall designate the date upon which the election shall be held and the place or places within such district at which such election shall be held, which place or places may or may not be the school house or school houses in such district.

§ 37-59-105. Declaration of intention by local authorities; election; issuance of indebtedness.

At its first regular meeting following the receipt of the resolution of the board of trustees of a school district, the board of supervisors or governing authorities of the municipality, as the case may be, shall declare its intention to authorize the borrowing of said money and to issue the negotiable notes or certificates of indebtedness of the school district as evidence of same. Said resolution shall also set forth the amount of the indebtedness to be incurred and the purpose or purposes for which the money so borrowed is to be expended. The said resolution so adopted shall be published once each week for two (2) consecutive weeks in a newspaper having a general circulation in the school district involved, with the first publication thereof to be made not less than fifteen (15) days prior to the date upon which the board of supervisors or governing authorities of the municipality, as the case may be, are to take final action upon the question of authorizing the borrowing of said money. If no petition requesting an election is filed prior to such meeting as is hereinafter provided, then the board of supervisors or the governing authorities of the municipality, as the case may be, shall, at said meeting, by resolution spread upon its minutes, give final approval to the borrowing of said money and shall authorize the issuance of negotiable notes or certificates of indebtedness of the school district therefor in accordance with the provisions of this article.

If at any time prior to said meeting a petition signed by not less than twenty per cent (20%) of the qualified electors of the school district in-

volved shall be filed with the board of supervisors or governing authorities of the municipality, as the case may be, requesting that an election be called on the question of incurring said indebtedness, then the board of supervisors or governing authorities of the municipality shall, not later than the next regular meeting, adopt a resolution calling an election to be held within such school district upon the question of the incurring of said indebtedness of the purposes and in the amount requested. Such election shall be called and held, and notice thereof shall be given, in the same manner provided in Article 1 of this chapter for elections upon the question of the issuance of the bonds of school districts, and the results thereof shall be certified to the board of supervisors or the governing authorities of the municipality, as the case may be. If a majority of the qualified electors of the school district shall vote in favor of incurring said indebtedness, then the board of supervisors or governing authorities of the municipality, as the case may be, shall proceed to issue said negotiable notes or certificates of indebtedness as prayed for in the original resolution of the board of trustees; however, if a majority of the qualified electors voting in said election vote against incurring said indebtedness, then said notes or certificates of indebtedness shall not be issued.

Money may be borrowed under the provisions of this article and the negotiable notes or certificates of indebtedness evidencing same may be issued as provided in this article (1) without the necessity of being authorized in an election called for that purpose, except where a petition requesting an election is filed as provided herein

and (2) without the necessity of giving notice thereof except as specifically provided herein.

SECTION 185. Section 37-59-105, Mississippi Code of 1972, is amended as follows:

37-59-105. The school board shall by resolution declare its intention to authorize the borrowing of said money and to issue the negotiable notes or certificates of indebtedness of the school district as evidence of same. Said resolution shall also set forth the amount of the indebtedness to be incurred and the purpose or purposes for which the money so borrowed is to be expended. The said resolution so adopted shall be published once each week for two (2) consecutive weeks in a newspaper having a general circulation in the school district involved, with the first publication thereof to be made not less than fifteen (15) days prior to the date upon which the school board is to take final action upon the question of authorizing the borrowing of said money. If no petition requesting an election is filed prior to such meeting, then the school board shall, at said meeting, by resolution spread upon its minutes, give final approval to the borrowing of said money and shall authorize the issuance of negotiable notes or certificates of indebtedness of the school district therefor in accordance with the provisions of this article.

If at any time prior to said meeting a petition signed by not less than twenty percent (20%) of the qualified electors of the school district involved shall be filed with the school board requesting that an election be called on the question of incurring said indebtedness, then the school board shall, not later than the next regular meeting, adopt a resolution calling an election to be held within such school district upon the question of the incurring of said indebtedness for the purposes and in the amount requested. Such election shall be called and held, and notice thereof shall be given, in the same manner provided in

Article 1 of this chapter for elections upon the question of the issuance of the bonds of school districts, and the results thereof shall be certified to the school board. ✓ If three-fifths (3/5) of the qualified electors voting in said election shall vote in favor of incurring said indebtedness, then the school board ✓ shall proceed to issue said negotiable notes or certificates of indebtedness as prayed for in the original resolution of the school board; ✓ however, if less than three-fifths (3/5) of the qualified electors voting in said election vote in favor of incurring said indebtedness, then said notes or certificates of indebtedness shall not be issued.

Money may be borrowed under the provisions of this article and the negotiable notes or certificates of indebtedness evidencing same may be issued as provided in this article (1) without the necessity of being authorized in an election called for that purpose, except where a petition requesting an election is filed as provided herein and (2) without the necessity of giving notice thereof except as specifically provided herein.

SECTION 203. The qualified electors of any county having an elected county superintendent of education on July 1, 1986, shall decide at the November 1988 general election whether (a) to continue to have such office elected, or (b) to abolish such office of county superintendent of education in the county. The county board of supervisors of such counties shall publish notice of said election once a week for at least three (3) consecutive weeks prior to the November 1988 general election in at least one (1) newspaper published or circulated in such county. The proposition shall be submitted to a vote of all qualified electors residing outside the territory of any municipal separate or special municipal separate school district located within such county. Such election shall be held in the same manner as other elections are held in the county. If a majority of the qualified electors who voted in such election vote in favor of the abolition of such office, such abolishment shall be effective at the end of any regular term of office or whenever a vacancy shall occur in said office. In counties where the office of elected county superintendent of education has been abolished, it shall not be reinstated.

APPENDIX G

MISS. CODE ANN. § 37-7-611

§ 37-7-611. Merging of adjacent school districts.

Where the corporate limits of any municipality which constitutes a municipal separate school district, either with or without added territory, are extended so as to include the whole or any part of an existing adjacent school district in the county school system or municipal separate district, then such adjacent school district, or such part thereof as is included within the corporate limits of the municipality by reason of the extension thereof, shall thereby automatically be merged with and become a part of such municipal separate school district. However, when any such extension, that is, an extension taking in a part of or all of an adjacent school district, becomes effective subsequent to September 1 of any fiscal year of said school district, that portion of the existing adjacent school district which is included because of the extension of the corporate limits of such municipality shall become annexed to the municipal separate school district immediately but shall remain under the jurisdiction of said adjacent school district for the remainder of such fiscal year for school purposes only, and it shall be the duty of such existing adjacent school district to continue to provide for the education and transportation for the balance of such fiscal year of the pupils residing in that portion of said existing adjacent school district included within the municipal separate school district by virtue of such extension at the expense of the existing adjacent school district, all just as though the extension of the municipal boundaries had not become effective until the last day of the fiscal year of the school districts involved; when the school building or buildings of any such adjacent school district in the county school system shall be included within the corporate limits of the municipality by reason of any such extension of such corporate limits then the whole of such adjacent school

district shall automatically be added to and become a part of such municipal separate school district as added territory.

When the corporate limits of any municipality shall be extended but the school building or buildings of an existing adjacent school district are not included therein, then, on petition of a majority of the qualified electors residing in that portion of such existing adjacent district which is not included within the corporate limits of the municipality filed with the governing authorities of the municipality, that part of such adjacent district not included within the corporate limits of the municipality shall be added to the municipal separate school district as added territory and shall be operated thereafter as a part of the municipal school district system. However, when the corporate limits of a municipality are extended so as to include within the corporate limits one or more school buildings being used as attendance centers of an adjacent school district having more than one attendance center, but all of the school buildings of such district are not so included within the corporate limits, then, in addition to that portion of the adjacent school district included within the corporate limits as extended, which shall be automatic as hereinabove set forth, there shall become a part of such municipal separate school district as added territory that area or areas designated by agreement between the trustees of the municipal separate school district and the trustees of the adjacent school district which, before becoming effective, must be approved by the state educational finance commission, the effective date thereof to be designated by proper order of the educational finance commission. In the event no agreement has been reached between the trustees of the respective school districts and filed with the educational finance commission within ninety days from the effective date of the expansion of the municipal limits, then the educational finance commission, on its own motion or on motion of either of the school districts involved, shall by

order spread upon its minutes, designate such area outside the municipal limits, as extended, as shall be included in the municipal separate school district as added territory, together with the effective date thereof. Either school district involved shall have the right to appeal from the decision of the educational finance commission in the manner provided by sections 37-45-51 and 37-45-61.

SOURCES: Codes, 1942, § 6411-06; Laws, 1953, Ex. Sess., ch. 23, § 6; 1959 Ex. Sess., ch. 29, § 1.

APPENDIX H

[SEAL] **U.S. Department of Justice**

WBR:SSC:MSB:gmh
DJ 166-012-3
P9110
P9535-9549

Washington, D.C. 20530

August 29, 1986

Honorable Edwin Lloyd Pittman
Attorney General
P. O. Box 220
Jackson, Mississippi 39205-0220

Dear Mr. Attorney General:

This refers to Chapter 492, S.B. No. 2117 (1986), which amends various provisions of the code affecting public schools in the State of Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on July 23, 1986. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

The Attorney General does not interpose any objection to the voting changes occasioned by Senate Bill No. 2117 (1986), as identified in your July 22, 1986, letter. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See also 28 C.F.R. 51.42 and 51.48.

We note that several of the provisions of Senate Bill No. 2117 (1986) authorize officials of the political subdivisions of the State to make changes affecting voting which are viewed as enabling legislation. Therefore, local officials are not relieved of their responsibility to seek preclearance, pursuant to the requirements of Section 5, of any changes affecting voting (*e.g.*, changing voting precinct lines, polling places, special election dates and procedures, boundary changes, etc.) which are adopted as a result of the provisions of Senate Bill No. 2117. 28 C.F.R. 51.14.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: /s/ Sandra Coleman
for Gerald W. Jones
Chief, Voting Section

APPENDIX I

STATE OF MISSISSIPPI
[SEAL]
OFFICE OF THE ATTORNEY GENERAL
TELEFAX NUMBER (601) 359-3796

CARROLL GARTIN JUSTICE BUILDING
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220

TELEPHONE (601) 359-3680

EDWIN LLOYD PITTMAN
ATTORNEY GENERAL

STEPHEN J. KIRCHMAYR
Deputy Attorney General

SIDNEY J. MARTIN
Deputy Attorney General

December 30, 1987

Honorable Gerald W. Jones
Chief, Voting Section
Civil Rights Division
Voting Section
P. O. Box 66128
Washington, D.C. 20035-6128

Re: SUBMISSION OF CHAPTER 492, SECTION 47; [MISS. CODE ANN. 37-7-611 (1972)] OF THE 1986 LAWS OF MISSISSIPPI

Dear Mr. Jones:

Please find enclosed herein the above referenced legislation submitted pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973(c) to the Attorney General of the United States.

Expedited consideration of this submission will be greatly appreciated.

Very truly yours,

/s/ Edward Lloyd Pittman
Edwin Lloyd Pittman
Attorney General

Enclosure

ELP/JE/vh

SUBMISSION UNDER SECTION 5 OF THE VOTING RIGHTS ACT OF 1965 AS AMENDED, 42 U.S.C. § 1973(c)

TO: The Attorney General of the
United States of America
The Honorable Edwin Meese, III

SUBMISSION OF CHAPTER 492, SECTION 47; [MISS. CODE ANN. 37-7-611 (1972)] OF THE 1986 LAWS OF MISSISSIPPI

EXPEDITED CONSIDERATION REQUESTED

Pursuant to Section 5 of the Voting Rights Act of 1965, as amended and extended, 42 U.S.C. § 1973(c) [hereinafter referred to as Section 5] and the U.S. Department of Justice's Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as amended, 28 C.F.R. §§ 51.1 *et seq.* (1987), the State of Mississippi, by and through the Attorney General of the State of Mississippi, Edwin Lloyd Pittman, respectfully submits to the Attorney General of the United States Chapter 492, Section 47; [Miss. Code Ann. §37-7-611 (1972)] of the 1986 Laws of the State of Mississippi currently codified at Miss. Code Ann. § 37-7-611 (1972) [hereinafter sometimes referred to as Chapter 611 and/or instant submission]. In making this submission the State of Mississippi hereby expressly reserves and does not waive any and all objections it may have concerning whether the instant submission is subject to the preclearance requirements of Section 5. For this submission, the State of Mississippi respectfully states as follows:

28 C.F.R. § 51.27(a).

A copy of Chapter 492, Section 47; [Miss. Code Ann. §37-7-611 (1972)] as approved on April 15, 1986, is attached hereto as Appendix A. (See Chapter 492 attached hereto as Appendix A-1).

28 C.F.R. § 51.27(b).

Chapter 492, Section 47 of 1986 repeals a series of Code sections dealing with the creation, abolition and administration of school districts. The instant submission concerns the repeal of Miss. Code Ann. §37-7-611 (1972). Accordingly, §37-7-611 is attached hereto as Appendix B and Appendix B-1. Miss. Code Ann. §37-7-611 (1972) is the codification of Chapter 29 of the 1959 (Extraordinary Session) Laws of Mississippi, and is attached hereto as Appendix C.

28 C.F.R. § 51.27 (c).

Chapter 492 of the 1986 Laws of Mississippi is known and cited as the "Mississippi Uniform School Law of 1986." It is a comprehensive and detailed enactment dealing with the whole range of issues facing education. In order to congregate all laws of the instant subject matter into one uniform act, other piecemeal legislation had to be repealed. The major part of Chapter 492, as it deals with the Voting Rights Act of 1965, as amended and extended, 42 U.S.C. §1973 (c), has already been precleared by the United States Justice Department on August 29, 1986.

The subject of the instant submission is Miss. Code Ann. §37-7-611 (1972) which is the codification of Chapter 29 of the 1959 (Extraordinary Session) Laws of Mississippi. Chapter 29 provided for the merging of adjacent school districts.

> "Where the corporate limits of any municipality which constitutes a municipal separate school district, either with or without added territory, are extended so as to include the whole or any part of an existing adjacent school district in the county school system or municipal separate district, then such adjacent school district, or such part thereof as is included within the corporate limits of the municipality by reason of the ex-

> tension thereof, shall thereby automatically be merged with and become a part of such municipal separate school district."

Chapter 29 further provided that when the corporate limits of any municipality shall be extended but the school building or buildings of an existing adjacent school district are not included therein, then on petition of a majority of the qualified electors residing in that portion of such existing adjacent district which is not included within the corporate limits of the municipality filed with the governing authorities of the municipality that part of such adjacent district not included within the corporate limits of the municipality shall be added to the municipal separate school district as added territory and shall be operated thereafter as a part of the municipal school district system.

28 C.F.R. § 51.27 (d).

The person making this submission is Edwin Lloyd Pittman, the Attorney General of and the Chief Legal Officer for the State of Mississippi, whose address is Post Office Box 220, Jackson, Mississippi, 39205, and whose telephone number is (601) 359-3680.

28 C.F.R. § 51.27 (e).

The name of the submitting authority and the jurisdiction responsible for the change is the State of Mississippi.

28 C.F.R. § 51.27 (f).

Not applicable.

28 C.F.R. § 51.27 (g).

The Legislature of the State of Mississippi was responsible for enacting the chapter law herein submitted by legislative act.

28 C.F.R. § 51.27 (h).

The legislative power of the State of Mississippi is vested in a legislature which shall consist of a senate and a house

of representatives as set forth by Article 4, Section 33 of the Mississippi Constitution. Article 4, Section 59 of the Mississippi Constitution provides that bills may originate in either house and Article 4, Section 62 allows that no amendment to bills by one house shall be concurred in by the other except by a vote of the majority thereof. Article 4, Section 71 denotes that every bill introduced into the legislature shall have a title which clearly indicates the subject matter or matters of the proposed legislation. Further, Article 4, Section 72, sets out that every bill which passed both houses shall be presented to the Governor for his signature; but if he does not approve such bill, he shall return it, with his objections, at which point, both houses shall reconsider such bill and upon a two-thirds ($^2/_3$) vote of each house, it shall become a law.

28 C.F.R. § 51.27 (i).

Chapter 492, Section 47 was adopted effective April 15, 1986.

28 C.F.R. § 51.27 (j).

Section 47 of Chapter 492 took effect and was in force from and after July 1, 1987.

28 C.F.R. § 51.27 (k).

The Attorney General of Mississippi cannot state that the instant submission has not yet been enforced or administered because such instant submission has been enforced and administered.

28 C.F.R. § 51.27 (l).

The instant submission affects each separate school district in the entire State of Mississippi.

28 C.F.R. § 51.27 (m).

The obvious reason for this change is to void any piecemeal legislation dealing with the subject addressed in the uniform school law. Any indirect changes in the electoral

procedure or process repealed by Section 47 are contained as new legislation in the other sections of Chapter 492, most of which have already been precleared by the United States Justice Department. Section 47 is simply a house cleaning measure for Chapter 492.

It is the automatic expansion of the school district which had been repealed by the instant submission. The option to expand however, is not forclosed. Section 52, of the Chapter 492 of the 1986 Laws of Mississippi (precleared by the United States Justice Department on August 29, 1986) provides that the school board of any school district may abolish such existing district or reorganize, change or alter the boundaries of any such school district.

28 C.F.R. § 51.27 (n).

The instant submission does not and will not adversely affect racial or language minority groups. The instant submission does not affect language minority groups as such. The instant submission does *not* have the purpose, and it does *not* have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

28 C.F.R. § 51.27 (o).

Presently there is pending in the Jackson Division of the United States District Court for the Southern District of Mississippi, a civil action which challenges the current codification of Chapter 492 because such chapter had not been precleared under Section 5 of the Voting Rights Act of 1965, *Kirksey, et al v. Pittman, et al*, Civil Action No. J86-0558(B) (S. D. Miss. filed August 12, 1986). However, since the filing of the suit substantive parts of 492 have been precleared by the Justice Department on August 29, 1986. The attorney for the plaintiffs in that litigation is:

Carroll Rhodes, Esquire
P.O. Box 588

Hazelhurst, Mississippi 39083
(601) 894-4323

28 C.F.R. § 51.27(p).

"The Mississippi Uniform School Law of 1986" completely revamps and preempts any legislation of the general subject matter. Chapter 492 has been precleared on August 29, 1986. There is no direct correlation among any repealed statues and any section of Chapter 492. Therefore, a statement that the prior practice has been precleared or is not subject to the preclearance requirement cannot be made.

28 C.F.R. § 51.27 (q).

Not applicable.

28 C.F.R. § 51.27 (r).

This submission does not concern a redistricting, annexation, or other complex change.

28 C.F.R. § 51.28(a) Demographic Information.

(1) Not applicable.

(2) Mississippi Municipalities and Counties in Mississippi, apparently do not maintain records which identify registered voters by race and language group.

(3) No estimates of population by race and language group were made in connection with the adoption of the chapter law herein being submitted.

(b) Maps.

(1)-(6) All of these sections are irrelevant to this submission because this submission does *not* revise the constituency that votes, nor does this submission affect prior or new boundaries of voting units, the prior or new boundaries of voter precincts, the location of racial and language minority groups, the location of prior new polling places or the location of prior and new voter registration sites.

(c) Annexations.

Not applicable.

(d) Election Returns.

Not applicable.

(e) Language Usage.

The submitted chapter law does not affect the use of language in the electoral process.

(f) Publicity and Participation.

The submitted chapter law does not involve a controversial or potentially controversial matter.

(1) No newspaper articles are attached.

(2) There are apparently no available public notices concerning the adoption of the submitted chapter law.

(3) The entries in the journals of the Mississippi Senate and the Mississippi House of Representatives concerning the adoption of the submitted chapter laws are attached as Appendix D.

(4) There are no statements concerning the proposed change.

(5) There are no comments from the general public.

(6) See (3) above.

(g) Availability of the Submission.

Not applicable.

(h) Minority Group Contacts.

The following black adult citizens of Mississippi can be expected to be familiar with the instant submission or have been active in the political process:

The Honorable Reuben V. Anderson
Associate Justice
Supreme Court of Mississippi
P.O. Box 117
Jackson, Mississippi 39205
(601) 359-3697

The Honorable Fred L. Banks, Jr.
Circuit Judge
Seventh Circuit Court District
P.O. Box 327
Jackson, Mississippi 39205
(601) 968-6659

The Honorable George S. Smith
President, Board of Supervisors of Hinds County
P.O. Box 205
Terry, Mississippi 39170
(601) 968-6695

Pursuant to 28 C.F.R. § 51.34, the State of Mississippi respectfully requests that this submission be given *expedited consideration* due to the fact it is involved in pending litigation.

If the Attorney General of the United States needs any further information concerning this submission, the State of Mississippi will attempt to supply it.

This, the 30th day of December, 1987.

Respectfully submitted,

STATE OF MISSISSIPPI

BY: /s/ Edwin Lloyd Pittman
EDWIN LLOYD PITTMAN
ATTORNEY GENERAL
STATE OF MISSISSIPPI

Attorney and Chief Legal Officer
for the State of Mississippi

John H. Emfinger
Special Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205
(601) 359-3680

APPENDIX J

[SEAL] **U.S. Department of Justice**

WBR:MAP:JAR:gmh
DJ 166-012-3
T0966
T3369

Washington, D.C. 20530

FEB 28 1988

Honorable Mike Moore
Attorney General
P. O. Box 220
Jackson, Mississippi 39205-0220

Dear Mr. Attorney General:

This refers to Section 47 of Chapter 492 (1986), insofar as it repeals Miss. Code §37-7-611 concerning the extension of municipal separate school district boundaries in the State of Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 31, 1987. Although we noted your request for expedited consideration, we have been unable to respond until now.

Our analysis indicates that the information sent is insufficient to enable us to determine that the proposed change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. Therefore, please provide the following information:

1. A detailed description of the process that resulted in the repeal of §37-7-611. In that regard, we understand that a committee appointed by the State Auditor prepared draft legislation which was the basis for Chapter 492, and that the committee's proposal did not provide for the repeal of §37-7-611. Identify the specific manner in which the repealer was incorporated into Chapter 492 and, if it

was added by an amendment, provide a breakdown of votes, by member, for that amendment. Identify the legislators who were the principal proponents of the repeal and provide daytime telephone numbers at which they may be contacted. Provide copies of any legislative analyses of the meaning and effect of the repealer and all newspaper articles, editorials, and letters to the editor concerning the repeal of §37-7-611.

2. A detailed explanation of the reasons for the repeal of §37-7-611, and identify the sources of your information as to the reasons for the repeal. Indicate whether the repeal was related to any particular pending or planned annexations by municipalities which have municipal separate school districts. We note that you have indicated that the reason for repealing §37-7-611 was that it was "piecemeal legislation" concerning the method by which school district boundaries may be altered. However, it has been alleged that there are special circumstances which justify the provision in §37-7-611 that when a municipality with a municipal separate school district annexes territory located in an adjacent school district the boundaries of the municipal school district also are automatically extended into the adjacent district. One such special circumstance may be that the persons annexed into the municipality thereby become eligible to vote for the municipal governing body which in turn appoints the members of the municipal school district's board of trustees. Indicate the extent to which this circumstance was considered in determining that §37-7-611 should be repealed. It also would be helpful if you would provide information as to the legislative history of §37-7-611 and the reasons for its adoption.

3. Identify the minority legislators or minority citizens who specifically were consulted regarding the inclusion of this repealer in Chapter 492 and summarize the comments they provided. If no minority legislators or citizens were consulted, explain the reasons for this omission.

4. It has been alleged that annexations by municipalities which have municipal separate school districts generally are of predominantly white residential areas, and that the repeal of §37-7-611's automatic boundary extension provision will permit municipal annexation of these areas and, at the same time, allow those whites to remain in predominantly white school districts that adjoin predominantly black municipal school districts. Please provide us with whatever information the state has which may be enlightening on this issue. In particular, include information on the population, by race, of all residential areas annexed during the last five years to municipalities with separate school districts and the population, by race, of any annexations proposed by "municipal school district" cities which currently are pending in a chancery court or other proceeding (if an annexation or proposed annexation includes an area that was part of the "added territory" of the municipal school district, provide the requested population data separately for the annexed "added territory" and the annexed area that was not in the municipal school district). Include the student population, by race, of each municipal separate school district in the state and each county, consolidated, and consolidated line school district that adjoins a municipal school district.

The Attorney General has sixty days in which to consider a complete submission pursuant to Section 5. This sixty-day review period will begin when this Department receives the information necessary for the proper evaluation of the change you have submitted. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.37(a)). Further, you should be aware that if no response is received within sixty days of this request, the Attorney General may object to the proposed change consistent with the burden of proof placed upon the submitting authority. See also 28 C.F.R. 51.40. Therefore, please inform us of the course of action the State of Mississippi plans to take to comply with this request.

In addition, it has come to our attention that a 1977 state act that modifies the procedures for extending municipal school district boundaries has not received the requisite Section 5 clearance. Our records fail to show that Chapter 379 (1977) has been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5. As you know, changes in procedure which affect voting are unenforceable unless and until the Section 5 preclearance requirements have been met. See 28 C.F.R. 51.10.

Finally, our review of Section 47 of Chapter 492 suggests that the repeal of code sections other than §37-7-611 occasioned voting changes which have not been submitted for Section 5 review. For example, it repealed §§37-7-605, 37-7-607, and 37-7-609 which established procedures for creating and abolishing municipal separate school districts, and deannexing "added territory" from such districts. Related to the repeal of these code sections was an amendment to §37-7-113 (Section 56 of Chapter 492) which altered the procedures by which school boards may reorganize, abolish, or alter their school districts which our records also show has not been submitted for Section 5 review.

If you have any questions concerning the matters discussed in this letter of if we can aid you in any way to obtain the additional information we have requested, feel free to call Ms. Julie Riley (202-272-6295) of our staff. In addition, to enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Mississippi plans to take with respect to Chapter 379 (1977) and the other matters discussed in the preceding paragraph. Refer to File Nos. T0966 and T3369 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: /s/ Gerald W. Jones
Gerald W. Jones
Chief, Voting Section

APPENDIX K

STATE OF MISSISSIPPI
[SEAL]
OFFICE OF THE ATTORNEY GENERAL

JIM WARREN
Special Assistant to
the Attorney General

FRANK SPENCER
Assistant Attorney General
Director, Public Advocacy

BEVERLEY D. COLEMAN, CPA
Director, Administration

MIKE MOORE
ATTORNEY
GENERAL

STEPHEN J. KIRCHMAYR
Deputy Attorney General
Litigation

ROBERT L. GIBBS
Deputy Attorney General
State/Local Government,
Opinions

January 27, 1989

Honorable Gerald W. Jones
Chief, Voting Section
Civil Rights Division
P. O. Box 66128
Washington, D.C. 20035-6128

Re: Supplemental Information Requested
Chapter 492, § 47 (1986)
Your File Nos. T0966 and T3369

Dear Mr. Jones:

On July 22, 1986, the State of Mississippi submitted Chapter 492 Laws of 1986 for preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended (42 U.S.C. § 1973(c)). On August 29, 1986, Chapter 492 was precleared under Section 5 as to the particular sections identified in our July 22, 1986 submission.

On December 30, 1987, the State of Mississippi submitted Section 47 of Chapter 492 since Section 47 was not specifically identified in our original submission. On March 2, 1988, we received your letter dated February 29, 1988 requesting additional information to be considered in connection with your review of Section 47. In response to

these requests, the following information is submitted, to-wit:

Request No. 1.

1. A detailed description of the process that resulted in the repeal of §37-7-611. In that regard, we understand that a committee appointed by the State Auditor prepared draft legislation which was the basis for Chapter 492, and that the committee's proposal did not provide for the repeal of § 37-7-611. Identify the specific manner in which the repealer was incorporated into Chapter 492 and, if it was added by an amendment, provide a breakdown of votes, by member, for that amendment. Identify the legislators who were the principal proponents of the repeal and provide daytime telephone numbers at which they may be contacted. Provide copies of any legislative analyses of the meaning and effect of the repealer and all newspaper articles, editorials, and letters to the editor concerning the repeal of §37-7-611.

Response to Request No. 1.

As stated in our submission of Section 47, the obvious reason for this repealer provision is to void any piecemeal legislation dealing with the subject addressed in the uniform school law. Section 47 is simply a house cleaning measure for Chapter 492, most of which has already been precleared by the United States Justice Department. It is error to view the inclusion of the repeal of Section 37-7-611 as an isolated legislative act.

The repeal of Section 37-7-611 and the numerous other code provisions repealed by Section 47 of Chapter 492 were incorporated into the original senate draft of the uniform school law. It was not added by way of amendment. On information from Mr. Robert Davidson, Staff Attorney for the Senate Interim Committee to Study Public School Finance and Administration, who was also a member of the State Auditor's Advisory Committee, the

repeal of Section 37-6-611 was incorporated into the draft of the legislation submitted to the Senate Committee by the Advisory Committee appointed by the state auditor. Attached hereto as Appendix A are various memoranda establishing the Auditor's Committee, listing its members, and outlining its efforts.

Chapter 492, as declared by Section 1 thereof, is known as the "Mississippi Uniform School Law of 1986. The purpose of this legislation is aptly stated in Section 2 of the act, to-wit: "From and after July 1, 1987, all school districts in the State of Mississippi shall have the same prerogatives, powers, duties, and privileges as provided in this act."

In order to accomplish uniformity in the powers, duties and privileges in all school districts, it was necessary to repeal numerous sections of the old education law that were inconsistent with the purpose and provisons of Chapter 492. Accordingly, Sections 44 through 51 of Chapter 492 repealed a total of seventy-two (72) provisions of the old education law. Section 44 repealed eleven (11) sections which prescribed the powers and duties of county boards of education. Section 45 repealed three (3) sections which provided for the organization of boards of trustees of municipal separate and consolidated school districts. Section 46 repealed two (2) sections which provided for the expenditure of school district funds for incidentals and further provided for contracts for attendance and transportation of pupils by municipal separate school districts. Section 47 repealed twenty-three (23) sections which provided for the creation and operation of municipal separate school districts, one of which was Section 37-7-611. Section 48 repealed twelve (12) sections which provided for the operation of special municipal separate school districts. Section 49 repealed six (6) sections which provided for the creation and operation of line consolidated school districts. Finally, Section 51 repealed nine sections which mandated and provided for a reorganization of school dis-

tricts in 1957. The specific code sections repealed by Sections 44 through 51 of Chapter 492 are as follows:

37-5-21	37-7-313	37-7-629	37-7-733	37-7-903
37-5-23	37-7-601	37-7-631	37-7-735	37-7-905
37-5-25	37-7-603	37-7-633	37-7-737	37-7-907
37-5-27	37-7-605	37-7-635	37-7-739	37-7-909
37-5-29	37-7-607	37-7-637	37-7-741	37-7-911
37-5-31	37-7-609	37-7-639	37-7-743	37-7-1
37-5-33	37-7-611	37-7-641	37-7-745	37-7-3
37-5-35	37-7-613	37-7-643	37-7-801	37-7-5
37-5-37	37-7-615	37-7-645	37-7-803	37-7-7
37-5-39	37-7-617	37-7-719	37-7-805	37-7-9
37-5-41	37-7-619	37-7-721	37-7-807	37-7-11
37-7-231	37-7-621	37-7-727	37-7-809	37-7-13
37-7-233	37-7-623	37-7-729	37-7-811	37-7-15
37-7-235	37-7-625	37-7-731	37-7-901	37-7-17
37-7-309	37-7-627			

As previously stated, the repeal of Section 37-7-611 cannot properly be viewed as an isolated legislative act as your several requests suggest. It was repealed together with a host of other laws for the purpose of placing all school districts on an equal footing, so that after July 1, 1987 all school districts in the state would have the same prerogatives powers, duties and privileges as mandated by Section 2 of Chapter 492. In this context, it should be noted that the sponsors of Chapter 492 sponsored the bill in its entirety and cannot be singled out as "principal proponents of the repeal of Section 37-7-611." The sponsors of Chapter 492 were as follows: Senators Jack Gordon, Irb Benjamin, Rob Smith, Alan Heflin and Cy Rosenblatt. The Mississippi Legislature is currently in session and these senators can be reached during the day at (601) 359-3770. The members of the Mississippi House of Representatives Education Committee who were instrumental in the passage of the Uniform School Act were as follows: "Representatives Robert Clark, Rick Fortenberry, Horace Buckley, Billy McCoy, Thomas Walman, and Jerry

Wilkerson. These representatives can also be reached at the above phone number.

Request No. 2.

A detailed explanation of the reasons for the repeal of §37-7-611, and identify the sources of your information as to the reasons for the repeal. Indicate whether the repeal was related to any particular pending or planned annexations by municipalities which have municipal separate school districts. We note that you have indicated that the reason for repealing §37-7-611 was that it was "piecemeal legislation" concerning the method by which school district boundaries may be altered. However, it has been alleged that there are special circumstances which justify the provision in §37-7-611 that when a municipality with a municipal separate school district annexes territory located in an adjacent school district the boundaries of the municipal school district also are automatically extended into the adjacent district. Once such special circumstance may be that the persons annexed into the municipality thereby become eligible to vote for the municipal governing body which in turn appoints the members of the municipal school district's board of trustees. Indicate the extent to which this circumstance was considered in determining that §37-7-611 should be repealed. It also would be helpful if you would provide information as to the legislative history of § 37-7-611 and the reasons for its adoption.

Response to Request No. 2

The Attorney General's Office has contacted legislators, legislative staff, education officials and school board attorneys[1] as to the reason for the repeal of Section 37-

[1] School officials and attorneys for Hattiesburg Public School District, Western Line Consolidated, Greenville Municipal, Harrison County, Biloxi and Gulfport schools and municipalities have filed written statements with your office expressing their views regarding the repeal of Section 37-7-611.

7-611. Other than one suggestion that the repeal of Section 37-7-611 was mistakenly incorporated into Chapter 492, the general view held is that the repeal of this section and the seventy one (71) other code sections were consistent with the legislative purpose to create uniformity among the various types of school districts by granting all districts the same prerogative powers, duties and privileges. The repeal of Section 37-7-611 was not considered separately but rather was considered together with the repeal of all the provisions listed in response to Request No. 1 which concerned the creation and operation of the various types of school districts existing under the prior education law. The *Report of the Senate Interim Committee to Study Public School Finance and Administration in Mississippi* contains the following statement:

> "Mississippi schools currently operate under four different kinds of school districts—eight if you count the sub-categories—each with its own system of government and finance. In addition to municipal separate districts, the state now has special municipal separate, consolidated and countywide school districts. These types of districts were the result of the Special Session of the Legislature in 1953 which reduced more than 2,000 Mississippi school districts to 151 school districts, and were considered necessary at that time. Several types of districts in existence today are still serving well but there are flaws in each. *It appears that if there were only one type of district so that all of the laws pertaining to districts would apply to each district in the state, rather than special laws for special types of districts, the administration and operation of school districts would be more effective and beneficial to the state.*" (Emphasis added)

Excerpts of the *Report of the Senate Interim Committee to Study Public School Finance and Administration in Mississippi* are attached hereto as Appendix B.

The repeal of Section 37-7-611 and the seventy-one (71) other "special laws for special types of districts "were considered essential to effectuating the purpose of Chapter 492. It does not appear that consideration was given to any special circumstances that may have justified leaving the provisions of Section 37-7-611 in tact. It was apparently felt that the provisions of Section 52 of Chapter 492 authorizing school districts to abolish or reorganize such districts or change or alter the boundaries of any school district would still allow school districts the option to expand and at the same time extend to all school districts the same privileges.

Section 37-7-611 was first enacted at the 1953 Extraordinary Session of 1953 as Chapter 23 §6. It was revised by Chapter 29, §1, 1959 Extraordinary Session. The 1959 amendment did not change the relevant language of Section 37-7-611. Copies of these chapter laws are attached as Appendix C. Similar annexation provisions existed under earlier Mississippi Codes, e.g., see Chapter 315, § 1 of 1926 Laws, a copy of which is included in Appendix C.

Request No. 3.

Identify the minority legislators or minority citizens who specifically were consulted regarding the inclusion of this repealer in Chapter 492 and summarize the comments they provided. If no minority legislators or citizens were consulted, explain the reasons for this omission.

Response to No. 3.

Like Request Nos. 1 and 2 above, this request presupposes that the repeal of Section 37-7-611 was given separate and individual consideration and that it was viewed as something other than a house cleaning measure. Several minority legislators were instrumental in the passage of

Chapter 492. Two in particular were Representative Robert Clark and Representative Horace Buckley. They can be reached during the day at (601) 359-3770.

Request No. 4.

It has been alleged that annexations by municipalities which have municipal separate school districts generally are of predominantly white residential areas, and that the repeal of § 37-7-611's automatic boundary extension provision will permit municipal annexation of these areas and, at the same time, allow those whites to remain in predominantly white school districts that adjoin predominantly black municipal school districts. Please provide us with whatever information the state has which may be enlightening on this issue. In particular, include information on the population, by race, of any annexations proposed by "municipal school district" cities which currently are pending in a chancery court or other proceeding (if an annexation of proposed annexation includes an area that was part of the "added territory" of the municipal school district, provide the requested population data separately for the annexed "added territory" and the annexed area that was not in the municipal school district). Include the student population, by race, of each municipal separate school district in the state and each county, consolidated, and consolidated line school district that adjoins a municipal school district.

Response to Request No. 4.

The State of Mississippi does not maintain a centralized system for the reporting of municipal annexations. The U. S. Department of Justice is the only agency to our knowledge that maintains these records.

While the data sought by this request may be a permissible inquiry in the context of examining any alleged discriminatory purpose underlying the repeal of Section 37-7-611, which we submit cannot exist in this case, the

data sought, i.e. the racial composition of school population is totally irrellevant to a Section 5 inquiry.

Additionally, in view of the Section 5 preclearence requirements with respect to municipal annexations, and in light of the establishment of single member education 523 of the 1988 Laws of Mississippi, we cannot see how the repeal of Section 37-7-611 can operate so as to impermissibly dilute or restrict minority voting rights. It is noted that the *Joint Resolution Memorializing the Repeal of Section 37-7-611, Miss. Code of 1972, as amended, for Preclearance by the United States Department of Justice*, filed with your office by officials of Harrison County, Biloxi and Gulfport School Districts, as well as the officials of the cities of Gulfport and Biloxi, express the view in its accompanying cover letter that if Section 37-7-611 were to be enforced in their area, it would operate to dilute minority voting strength in the election of the members to the Harrison County School Board.

If you have any questions about this response, please contact the undersigned at (601) 359-3839, Also, Mr. Robert Davidson, who was Staff Attorney for the Senate Interim Committee to Study Public School Finance and Administration, is very familiar with the legislative history of the Uniform School Law and he can be reached at (601) 359-3217.

Sincerely,

/s/ Giles W. Bryant
Giles W. Bryant
Special Assistant Attorney General

/jw

APPENDIX L

[SEAL]

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 31, 1989

Honorable Mike Moore
Attorney General
P.O. Box 220
Jackson, Mississippi 39205-0220

Dear Mr. Attorney General:

This refers to Section 47 of Chapter 492 (1986) of the State of Mississippi insofar as it repeals Section 37-7-611 of the Mississippi Code, dealing with the modification of municipal school district boundaries. We received the information to complete your submission on January 30, 1989.

We have carefully considered the information you have provided along with the comments and information received from other interested parties. As a result of our review, a number of factors emerge as being very significant to the determination the Attorney General is called upon to make in a situation of this nature.

First, Section 37-7-611 provides that when a municipality with a municipal school district annexes land that is not in the municipal school district, the boundary between the municipal school district and adjoining school districts

shall be modified to accord with the newly established municipal boundaries. Under that system, Mississippi currently has in place a mechanism whereby all political boundary disputes relating to a proposed annexation, whether they concern school or other matters, may be aired and considered in a proceeding conducted by the chancery court to determine whether the annexation should be approved.

Secondly, it appears that the state, by repealing Section 37-7-611, proposes to replace this judicial, case-by-case approach to reviewing annexations as they relate to municipal school districts with a system in which the neighboring school district can, and apparently often will, exercise veto authority over such a municipal school district annexation.

Thirdly, according to our information it is generally recognized in the state that there is a demographic trend toward the movement of whites out of the cities into suburban and rural areas while blacks are moving from the rural areas of the state into the cities. It further appears that this demographic trend may play a significant role in the opposition to annexations by school districts that neighbor a municipal district since we have noted specific recent annexation disputes where a principal issue has been opposition by predominantly white areas to transferring their students into a majority black school system.

While we recognize that demographic patterns are not uniform throughout the state, demographic data available to us suggest that the repeal of Section 37-7-611 will have a significant racial impact. According to information published by the State Department of Education, approximately half the municipal school districts in the State of Mississippi have a student population that is majority black and about two-thirds are 40 percent black or higher. Thus, with the repeal of Section 37-7-611, the long term effect appears to be that, with the movement of whites out of the cities, the municipal school systems in Mississippi will

essentially be frozen in their present boundaries with increasingly higher black population percentages and will be economically disadvantaged while neighboring school districts change in an opposite manner.

Finally, we note that the repeal of Section 37-7-611, by allowing for annexations to cities without the concomitant expansion of municipal school district boundaries, is likely to create a class of city voters (for the most part predominantly white) who will not reside in the city school system yet may vote for the city governing body which, under Mississippi law, appoints the city school board. We have received no explanation for the establishment of such a political system which appears not only to have the potential to impact negatively on the influence of minority city school district residents but also to treat black voters differently than white voters.

Under Section 5 of the Voting Rights Act, the submitting jurisdiction has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See *Georgia* v. *United States*, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. That is especially so here, since a covered jurisdiction may not seek to establish or revise political boundary lines so as to include some voters in the jurisdiction and fence others out based on race. *Perkins* v. *Matthews*, 400 U.S. 379 (1971); *accord, City of Pleasant Grove* v. *United States*, 623 F. Supp. 782 (D.D.C. 1985), *aff'd*, 479 U.S. 462 (1987). Therefore, on behalf of the Attorney General, I must object to the repeal of Section 37-7-611.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of

Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the repeal of Section 37-7-611 legally unenforceable. 28 C.F.R. 51.10.

In addition, we wish to again bring to your attention the fact that Chapter 379 (1977), which occasioned a similar change concerning the modification of municipal school district boundaries where a municipality annexes territory outside its principal county, has not received the requisite Section 5 clearance. Accordingly, unless and until the State of Mississippi receives a declaratory judgment from the District of Columbia Court or the Attorney General grants clearance, this change also is not legally enforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Mississippi plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,

/s/ James P. Turner

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

APPENDIX M

STATE OF MISSISSIPPI
[SEAL]
OFFICE OF THE ATTORNEY GENERAL
TELEFAX NUMBER (601) 359-3796
CARROLL GARTIN JUSTICE BUILDING
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE (601) 359-3680

MIKE MOORE
ATTORNEY GENERAL

January 12, 1990

Mr. Barry Weinberg
Acting Chief, Voting Section
Civil Rights Division
Post Office Box 66128
Washington, D. C. 20035-6128

RE: REQUEST FOR RECONSIDERATION OF THE LIMITED PRECLEARANCE OF CHAPTER 492 (1986), OR ALTERNATIVELY, FOR RECONSIDERATION OF OBJECTION TO REPEAL OF SECTION 37-7-611, MISS. CODE OF 1972, BY CHAPTER 492, § 47 (1986)

Dear Mr. Weinberg:

Please find enclosed the above-referenced request for reconsideration in accordance with 28 C.F.R. §51.45. As set forth herein, we also request a conference as authorized by 28 C.F.R. §51.47(a).

Sincerely,

Mike Moore, Attorney General

By: /s/ Giles W. Bryant
Giles W. Bryant
Special Assistant Attorney General

jw
Enclosures

REQUEST FOR RECONSIDERATION UNDER 28 C.F.R. § 51.45

TO: THE ATTORNEY GENERAL OF THE UNITED STATES, HONORABLE RICHARD THORNBURG

REQUEST FOR RECONSIDERATION OF THE LIMITED PRECLEARANCE OF CHAPTER 492 (1986), OR ALTERNATIVELY, FOR RECONSIDERATION OF OBJECTION TO REPEAL OF SECTION 37-7-611, MISS. CODE OF 1972, BY CHAPTER 492, § 47 (1986)

In accordance with 28 C.F.R. § 51.45 and the Voting Rights Act of 1965, 42 U.S.C. § 1973c, the Attorney General of the State of Mississippi, on behalf of the State of Mississippi, hereby requests the Attorney General of the United States to reconsider the limited preclearance of Chapter 492 (1986) rendered on August 29, 1986, or alternatively, to reconsider the March 31, 1989 objection to Chapter 492, § 47 (1986) insofar as it repeals Section 37-7-611, Miss. Code of 1972.

I.

REQUEST FOR CONFERENCE IN ACCORDANCE WITH 28 C.F.R. § 51.47

The Attorney General of the State of Mississippi also requests a conference as authorized by 28 C.F.R. § 51.47(a) in connection with this request for reconsideration, such conference to be held at a place and time to be determined by the Attorney General of the United States in accordance with 28 C.F.R. § 51.47(b).

II.

SUMMARY OF ARGUMENT IN SUPPORT OF RECONSIDERATION

Chapter 492 (1986) was submitted in its entirety on December 30, 1986, together with a comparative analysis

of each section of that law. The submission satisfied the requirements of 28 C.F.R. § 51.27. There was no authority for the Attorney General to grant only limited preclearance. Accordingly, the Attorney General should reconsider this limited preclearance and preclear the law as submitted—in its entirety.

The repeal of Section 37-7-611 was based on the legislative finding that public educational opportunities available to students residing in rural areas of Mississippi were substandard to those offered to students residing in urban areas. The purpose underlying the repeal of Section 37-7-611 was to protect the ad valorem tax base available to county school systems in the path of municipal expansions. The repeal of Section 37-7-611 was an educational policy decision totally unrelated to voting rights considerations, and the Attorney General's objection to this law completely frustrates the State of Mississippi's efforts to offer better educational opportunities to its students attending county and consolidated school systems.

Finally, the real basis of the Attorney General of the United States' March 31, 1989 objection to the repeal of Section 37-7-611, Mississippi Code of 1972, is its purported effect on school enrollment population and not its effect on voting population or any other voting concerns. The demographic trends relied on in the March 31, 1989 objection letter are erroneous. Most importantly, even if these demographic trends were present in Mississippi, the repeal of Section 37-7-611 can only impact one type of school election i.e., school bond issue elections, and the repeal of Section 37-7-611 simply cannot operate to minimize black voting strength in such elections.

III.

SECTION 37-7-611 AND ITS SUBMISSION HISTORY

Section 37-7-611, Mississippi Code of 1972, provided that whenever a municipality annexed adjoining territory which

included any part of an existing adjacent school district, then that part of the adjacent school district automatically merged with the municipalities' municipal separate school district. The actual language of Section 37-7-611 provided in part as follows:

> **§ 37-7-611 Merging of Adjacent School Districts:**
>
> "Where the corporate limits of any municipality which constitutes a municipal separate school district, either with or without added territory, are extended so as to include the whole or any part of an existing adjacent school district in the county school system or municipal separate district, then such adjacent school district, or such part thereof as is included within the corporate limits of the municipality by reason of the extension thereof, shall thereby automatically be merged with and become a part of such municipal separate school district.

The remaining provisions of Section 37-7-611 pertained to annexations that take effect after September 1 of any fiscal year of the adjacent school district; and also pertained to the effect of annexations that include or exclude school buildings, and to related matters.

Section 37-7-611 was repealed in 1986 by Section 47 of Chapter 492, 1986 Laws of Mississippi. Chapter 492, otherwise referred to as the Uniform School Law of 1986, was submitted for preclearance under Section 5 of the voting Rights Act of 1965 on July 22, 1986. Attached hereto as Appendix "A" is a copy of the state's submission statement (without exhibits). Thirteen sections of Chapter 492 were specifically outlined in the state's submission. (i.e., Sections 9, 25, 52, 53, 54, 55, 56, 153, 163, 164, 170,

185 and Section 203.) The submission statement at page 2 thereof contained the following language, "for the sake of brevity, the submission will only set forth the particular sections which deal primarily with voting rights even though the complete act is submitted for review." Chapter 492 (1986) was submitted in its entirety.

Most importantly, a loose-leaf notebook entitled **"Senate Bill Number 2117—Comparison of Current Law and New Law"** was attached to the submission statement as Exhibit "C" thereof. Due to its length, this comparative analysis is not included with this request for reconsideration. However, it was part of the original submission of Chapter 492 and should be on file in the United States Department of Justice. Also, it will be produced at any conference set by the Attorney General in connection with the instant request.

On August 29, 1986, the Attorney General of the United States precleared Chapter 492 as to those sections specified in the state's submission statement. A copy of this preclearance letter is attached hereto as Appendix "B".

Due to the uncertainty surrounding the Section 5 status of other sections of Chapter 492 and since the Section 5 status of certain sections of Chapter 492 was raised in *Kirksey, et al v. Pittman*, U.S.D.C. (S.D. Miss.), Civil Action No. J86-558(B), the State of Mississippi on April 30, 1987 submitted for Section 5 preclearance Sections 60 and 84 of Chapter 482 (1986), which were precleared on July 9, 1987. On December 30, 1987, the state submitted for Section 5 preclearance, Section 47 of Chapter 492 (1986), insofar as it repealed Section 37-7-611. The state's submission statement (without exhibits) is attached hereto as Appendix "C". On February 29, 1988, the State of Mississippi was advised that the information submitted in support of the preclearance of the repeal of Section 37-7-611 was insufficient and additional information was requested. The February 29, 1988 letter requesting additional information is attached hereto as Appendix "D".

Due to a change in personnel and intervening statewide elections, together with the usual extensiveness of the request for additional information, the state was not able to provide the requested information until January 27, 1989. A copy of the state's response is attached hereto as Appendix "E". On March 31, 1989, the Attorney General of the United States objected to the implementation of Section 47 of Chapter 492 (1986) insofar as it repealed Section 37-7-611. Since this letter forms the basis of this request, it is set out in substantial part as follows without indentation, to-wit:

* * *

[See Appendix L, pp. 139a-142a]

* * *

IV.

ARGUMENT

IV(A).

THE ATTORNEY GENERAL OF THE UNITED STATES HAS NO AUTHORITY UNDER 28 C.F.R., PART 51 TO GRANT ONLY LIMITED PRECLEARANCE TO A LAW THAT IS SUBMITTED IN ITS ENTIRETY

The state's submission of Chapter 492 clearly specified that it was being made in its entirety. Included with the submission was a detailed comparison of the "current and new law." Each section of Chapter 492 was properly explained. With respect to Section 47, even though the repealed sections were not set out, they were sufficiently described as providing for the creation and operation of municipal separate school districts.

The federal regulations implementing 42 U.S.C. § 1973c provide that if the Attorney General fails to make a written response within the sixty (60) day review period that such failure constitutes preclearance of the submitted

change (28 C.F.R. § 51.42). There was no written response as to any sections of Chapter 492 except for those specified in the state's submission statement.

Without question, covered jurisdictions have the burden of proof in submitting election changes for preclearance under Section 5, 28 C.F.R. § 51.52, *South Carolina v. Katzenbach*, 383 U.S. 301 (1966), *McCain v. Lylrand*, 465 U.S. 236 (1984). In *McCain v. Lylrand*, the Supreme Court stated:

> "When a jurisdiction adopts legislation that makes clearly defined changes in its election practices sending that legislation to the Attorney General merely with a general request for preclearance pursuant to § 5 constitutes a submission of the changes made by the enactment . . . " 465 U.S. at 256.

In submitting Chapter 492 (1986), the state clearly submitted it in its entirety and included with the submission a comparative analysis of each section. Its submission clearly satisfied 28 C.F.R. § 51.27 as it existed in 1986 at the time of submission. There was no requirement at that time that a copy of the document setting forth the voting practice to be replaced be provided as is now required by 28 C.F.R. 51.27(b). If the Attorney General determined that the state's submission was insufficient or incomplete, he should have requested additional information in accordance with 28 C.F.R. § 51.37. There was simply no authority at the time of this submission to grant limited preclearance in the face of a law submitted in its entirety. Accordingly, Chapter 492 (1986) should have been precleared in its entirety on August 29, 1986, and the State of Mississippi hereby requests that the Attorney General of the United States reconsider its limited preclearance of Chapter 492 and preclear this law as submitted—in its entirety.

136, 148 (1967). The statutes in issue have been passed by the Mississippi Legislature and are being enforced. The case is ripe for decision.

5.

We must also consider what effect, if any, to give the Mississippi Supreme Court's thorough and well reasoned decision in *Greenville Public School District*. We agree with the Mississippi Supreme Court that it has concurrent jurisdiction to adjudicate certain § 5 issues. *Tafflin v. Levitt*, __ U.S. __, 110 S.Ct. 792 (1990). State courts have jurisdiction to hear federal claims unless divested "by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." *Id.* at 795 (quoting *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981). In *Hathorn v. Lovorn*, 457 U.S. 255, 269 (1982), the Supreme Court held "that the Mississippi courts had the power to decide whether § 5 applied to the change...."

> Congress prohibited...jurisdictions from implementing any change in voting procedure without obtaining preclearance under § 5. Granting state courts the power to decide, as a collateral matter, whether § 5 applies to contemplated changes in election procedures will help insure compliance with the preclearance scheme.

Id. at 268.

However, the effect federal courts give to state court determinations of federal claims is a separate inquiry from that of concurrent jurisdiction. In short, federal courts

are not bound by state court decisions on matters of federal law. *See, e.g., Standard Oil Co. v. Johnson*, 316 U.S. 481, 483 (1942); *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447, 470-71 (1942) (Jackson. J., concurring). Therefore, the state court's interpretation of the § 5 preclearance issues is not binding on this court. Furthermore, the doctrines of res judicata and collateral estoppel are inapplicable, because the plaintiffs and the defendants were not parties to the state court action. *See Hathorn v. Lovorn*, 457 U.S. at 268 n.23 ("Common notions of collateral estoppel suggest that the state proceedings... would not bind other interested persons who did not participate in them...Persons dissatisfied with a state court's collateral resolution of a § 5 issue in proceedings involving other parties, therefore, are likely to be able to litigate the issue anew in federal court."). Moreover, § 21-1-59 was not in issue in *Greenville Public School District*.

Conversely, a state supreme court's interpretation of a state statute is binding on a federal court. *See Wainwright v. Goode*, 464 U.S. 78, 84 (1983) ("the views of the State's highest court with respect to state law are binding on the federal courts"); Brown v. Ohio, 432 U.S. 161, 167 (1977) ("Ohio courts 'have the final authority to interpret...that State's legislation.'") (quotation omitted). Accordingly, the Mississippi State Court's interpretation of the Uniform School Law is binding on this court.

B.

The primary issues involved in this case have been summarized by the Supreme Court as follows:

> The only questions in an action alleging a violation of the § 5 preclearance requirement are (1) whether a change is covered by § 5, (2) if the

> change is covered, whether § 5's approval requirements have been satisfied, and (3) if the requirements have not been satisfied, what relief is appropriate.

McCain v. Lybrand, 465 U.S. 236, 250 n. 17 (1984). Whether the amendments and repealer "had a discriminatory purpose or effect is not an issue at this stage of the § 5 litigation: that question must be initially decided by the District Court for the District of Columbia or the Attorney General." *Id.*

1.

First, we must address plaintiffs' contention that the USAG's determinations that the statutes are covered by § 5 and have not been precleared are not subject to review by this court. The Supreme Court has held that only the USAG's "exercise of discretion...or his failure to object within the statutory period" is unreviewable. *Morris v. Gressette*, 432 U.S. 491, 500-07 (1977). In *Morris*, the Court invalidated an untimely *nunc pro tunc* objection by the USAG to a South Carolina reapportionment plan. The USAG had failed to enter a timely objection to the submission. "[C]ompliance with § 5 is measured solely by the *absence*, for whatever reason of a timely objection on the part of the Attorney General." *Id.* at 502 (emphasis in original). Although the USAG's decision not to object is not reviewable, this does not preclude a consideration of whether the statutes in issue are covered by § 5 and were precleared, especially where, as here, that was arguable preclearance of the entire Uniform School Law on the first submission (1986).

2.

Whether these statues are covered by § 5 is a legal question and therefore appropriate for summary judgment. The scope of § 5 is broad. It is intended to reach "any state enactment which altered the election law of a covered State in even a minor way." *Allen*, 393 U.S. at 566. There are no statutory exceptions to § 5, "thus indicating an intention that all changes, no matter how small, be subjected to § 5 scrutiny." *Perkins v. Matthews*, 400 U.S. 379, 387 (1971) (quoting *Allen*, 393 U. S. at 568). The regulations in effect in 1986 when the Uniform School Law was submitted for preclearance provided:

> Any change affecting voting, even though it appears to be minor or indirect, returns to a prior practice or procedure, ostensibly expands voting rights, or is designed to remove the elements that caused the objection by the Attorney General to a prior submitted change, must meet the Section 5 preclearance requirement.

28 C.F.R. § 51.11 (1986) (currently codified at 28 C.F.R. § 51.12 (1999)).

The statutes in issue, at the very least, indirectly affect political subdivision boundaries. The regulations list examples of changes affecting voting; one is "[a]ny change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, deannexation, incorporation, reapportionment...)." 28 C.F.R. § 51.12 (1986) (currently codified at 28 C.F.R. § 51.13 (1990)). The trustees of a municipal separate school district in general are elected "by a majority of the governing authorities of the municipality...." Miss. Code Ann. § 37-7-203 (1972); Hattiesburg Code of Ordinances, Art. XXII, School Board (1989). The governing authorities of

the City, the mayor and council, are "elected from the municipality at large in accordance with the general laws for the holding of municipal elections." Hattiesburg Code of Ordinances, Art. I, §§ 2-2 and 2-4 (1989). Those residing in the annexed areas may vote in municipal elections if a proper ordinance is adopted by the council. Miss. Code Ann. § 21-8-7(4)(d) (1972).

Prior to the 1977 and 1978 amendments to § 21-1-59 and the 1986 repeal of § 37-7-611, municipal school district lines expanded to the same extent as the municipal annexations; now, under § 37-7-103, and the amendments to § 21-1-59, this result is not automatic. Here, the result is that citizens who reside in the Lamar and Forrest County annexations may still be in the county school districts. These citizens continue to vote for the Lamar and Forrest County Boards of Education; but they also vote for the City mayor and council, who in turn select the City board of trustees of the City school district. Therefore, at least an indirect change in voting has occurred.

Furthermore, it is significant that the USAG, who has considerable expertise in this area, considered these statutes to be "changes" within the meaning of § 5. In his March 31, 1989 objection to the repeal of § 37-7-611, he stated:

> [T]he repeal of Section 37-7-611, by allowing for annexations to cities without the concomitant expansion of municipal school district boundaries, is likely to create a class of city voters (for the most part predominantly white) who will not reside in the city school system yet may vote for the city governing body, which under Mississippi law, appoints the city school board.

And, in that same letter, he also found that the 1977 amendment to § 21-1-59 "occasioned a similar change concerning the modification of municipal school district boundaries where a municipality annexes territory outside its principal county." *See Dougherty County, Ga. Bd. of Educ. v. White*, 439 U.S. 32, 39 (1978) ("Given the central role of the Attorney General in formulating and implementing § 5, [his] interpretation of its scope is entitled to particular deference."); *Lucas v. Townsend*, 698 F. Supp. 909, 911 (M.D.Ga. 1988) ("Though not binding upon this...court, the Attorney General's interpretation of both the scope of Section 5 and his regulations promulgated thereunder is entitled to particular deference.").

Accordingly, we hold that the statutes do fall within the broad sweep of § 5. The vote from the annexed area could have an impact on the selection of the City school board. The vote of the City voters who reside in the municipal school district would be diluted by the vote of those residents in the annexed area who remain a part of the county school district. This constitutes the requisite change in voting.

3.

We next determine whether these statutes have been precleared. As stated, in 1986 the Uniform School Law was submitted to the USAG "in its entirety" and no objection was interposed within the statutory 60 day period. The regulations then in effect did not require jurisdictions to submit a copy of the prior law being

amended or repealed. 28 C.F.R. § 51.25 (1986).[5]

The regulations in effect in 1986 did require the submitting authority to include "a clear explanation of the change explaining the difference between the submitted change and the prior law or practice" if the change affecting voting was not readily apparent on the face of the document. 28 C.F.R. § 51.25(b)(1986). Those regulations also imposed a duty on the USAG to request additional information if the submission was incomplete:

> If a submission does not satisfy the requirements of § 51.25, the Attorney General shall request further information as is necessary from the submitting authority....

28 C.F.R. § 51.35 (1986). The USAG did not make such a request.

As discussed *supra*, the State explained that the Uniform School Bill was submitted in its entirety and was a reorganization and streamlining of the Mississippi school system. The plaintiffs contend that only those provisions which were specifically identified in the cover memorandum were precleared, asserting that the USAG's August 1986, letter which states that there was no objection to the voting changes "as identified in your July 22, 1986 letter" indicates that the USAG precleared only those particular sections. Moreover, the subsequent May 1990 USAG letter stated:

> It is well-established that to trigger § 5 review a

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[5] The current regulation requires "[a] copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed." 28 C.F.R. § 51.27 (1990).

> covered jurisdiction must submit a voting change to the Attorney General in a "unambiguous and recordable manner."...[T]he prior submission of the Uniform School Law...identified specific voting changes adopted...but...[the] submission contained [no] reference to the voting changes which the state now claims were precleared.

The letter further stated that the responsibility is on the submitting jurisdiction to identify voting changes, and that the USAG should not be required to uncover "voting changes of which the state itself seemingly was unaware at the time the prior submissions were made."

The plaintiffs also charge the state defendants with being inconsistent, because their statement that they submitted the entire bill for preclearance is in contradiction to the December 30, 1987, letter of resubmission, in which the MAG stated that "[t]he *major part* of Chapter 492, as it deals with the Voting Rights Act of 1965...has already been precleared" by the Justice Department on August 19, 1986. (Emphasis added.)

The defendants and intervenors respond that the bill was submitted in its entirety, and furthermore, that the booklet accompanying the submission explained that § 47 repealed those sections (including 37-7-611) governing the creation and operation of municipal school districts. They maintain that the entire bill was precleared by the USAG's failure to object, and that subsequent objection in 1989 and 1990 was of no effect.

In *Morris,* the Court held that the USAG's belated attempt to object to South Carolina's reapportionment plan was invalid:

> According to the terms of § 5, a covered jurisdiction is in compliance pursuant to the latter

> alternative [USAG method] once it has (i) filed a complete submission with the Attorney General, and (ii) received no objection within 60 days. ...[C]ompliance with § 5 is measured solely by the *absence,* for whatever reason of a timely objection on the part of the Attorney General.

432 U.S. at 502 (emphasis in original). The Court further stated that

> [i]n light of the potential severity of the § 5 remedy, the statutory language, and the legislative history, we think it clear that Congress intended to provide covered jurisdictions with an expeditious alternative to declaratory judgment actions....the extraordinary remedy of postponing the implementation of validly enacted state legislation was to come to an end when the Attorney General failed to interpose a timely objection based on a complete submission.

Id. at 504. And, the Court noted that the USAG's failure to act would not preclude a subsequent action to enjoin enforcement of the legislation.

Morris stands for the proposition that the USAG's failure to object to a complete submission is final, and any subsequent attempts to object are invalid. Needless to say, the question remaining after *Morris* is what constitutes a "complete submission." In *Allen,* which preceded *Morris,* none of the voting changes were formally submitted to the USAG; but the appellees contended that the USAG was aware of the changes when served with a copy of appellees' briefs in the four consolidated cases. The Supreme Court rejected this argument and held:

> While the Attorney General has not required any formal procedure, we do not think the Act contemplates that a "submission" occurs when the Attorney General merely becomes aware of the legislation, no matter in what manner....A fair interpretation of the Act requires that the State in some unambiguous and recordable manner submit any legislation or regulation in question directly to the Attorney General with a request for his consideration pursuant to the Act.

393 U..S. at 571.

In *United States v. Board of Comm'rs of Sheffield, Ala.*, 435 U. S. 110 (1978), the city submitted a letter which "sought approval only for the holding of a referendum," but did not ask for preclearance of the underlying change that was the subject of the referendum. When the USAG responded, he stated that he interposed no object to the holding of a referendum. The Supreme Court held that the district court erred in concluding that the USAG approved the underlying change as well. "[T]he purposes of the Act would plainly be subverted if the Attorney General could ever be deemed to have approved a voting change when the proposal was neither properly submitted nor in fact evaluated by him." *Id.* at 136.

McCain v. Lybrand, 465 U.S. 236 (1984), concerned a 1966 bill that had never been submitted for preclearance, although a 1971 amendment to the 1977 bill had been precleared. The district court held that (1) the USAG's request for additional information, including a copy of the 1966 statute, indicated that he had considered all aspects of the electoral scheme, including the changes effected in the 1966 Act; or (2) alternatively, that because the 1971 submission retained the changes, the lack of objection to the 1971 submission necessarily constituted approval of

those changes as well and rendered moot the failure to preclear the 1966 Act. The Supreme Court disagreed:

> To the extent there was ambiguity in the scope of the preclearance request, the structure and purpose of the preclearance requirement plainly counsel against resolving such ambiguities in favor of the submitting jurisdiction in the circumstances of this case. The preclearance process is by design a stringent one; it is predicated on the congressional finding that there is a risk that covered jurisdictions may attempt to circumvent the protections afforded by the Act; the burden of proof...is placed upon the covered jurisdiction...

Id. at 257.

Allen, Sheffield, and *McCain,* however, are factually distinguishable from this case. The MAG unambiguously submitted the Uniform School Law "in its entirety." The USAG was advised that only particular sections which dealt "primarily" with voting rights were discussed, "even though the complete act is submitted for review." The memorandum explained the comprehensive nature of the submission; and, most importantly, the booklet explained the repeal of § 37-7-611 governing the creation and operation of municipal school districts.

Of even greater significance is both the discussion of § 52 in the cover memorandum and booklet and the undisputed preclearance of that section. Section 52, § 37-7-103, was in effect a replacement for the school districting procedures. Prior to the Uniform School Law, the provisions pertaining to school district boundaries and

alterations varied, depending on whether the district was a county, municipal or consolidated school district. The 1986 Uniform School Law created uniformity among the school districts.[6] Section 52 amended § 37-7-103 (which had concerned changes to school districts by a county board of education) by granting jurisdiction to the school board of any school district to alter the boundaries of any such district by obtaining the consent of the adjoining school district involved; and the school board was authorized "to detach or add to such school district any part of the school district adjoining same, and...may detach territory from such school distinct and annex same to an adjoining district." All references to a county board of education and its authority to alter districts in the county were deleted; all references to a municipal school district and its required consent were deleted.

This view is in accord with the Mississippi Supreme Court's analysis of § 37-7-103:

> Miss. Code Ann. § 37-7-103...was enacted to

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[6] Section 37-6-5 was added by § 2 of the Uniform School Law. It provides in part:

> (1) From and after July 1, 1987, all school districts in the State of Mississippi shall have the same prerogatives, powers, duties and privileges as provided in this chapter.
> (2) As used in this act, the term "school board"shall mean (a) the county board of education of any countywide school district in this state; and (b) the board of trustees of any municipal separate, special municipal separate, consolidated or line consolidated school district in this state.

Section 37-6-5 was added by § 3:

> Each school district in the state shall be a political subdivision with the name of the district being "_____ School District."

Section 37-6-7 was added by § 4:

> Each school district shall be governed by a school board consisting of five (5) members, selected in the manner provided by law.

> control the abolition, alteration or creation of school districts after the reform. This statute gives the school board of any school district full jurisdiction, power and authority to alter the mutual consent of adjoining districts in the alteration of abutting boundaries. *All conflicting statutes concerning school boundaries were repealed, including § 37-7-611.*

Greenville Public School District, No. 07-CA-59534 at 3 (Dec. 12, 1990) (emphasis added).

This case is factually similar to *Woods v. Hamilton,* 473 F. Supp. 641 (D.S.C. 1979) (three-judge court). In *Woods,* South Carolina submitted the 1975 Home Rule Act for § 5 approval. The cover letter which accompanied the submission stated in full:

> For your consideration under the Voting Rights Act submitted herewith are certified copies of the following Act enacted by the General Assembly and approved by the Governor.
>
> | Ratification Number | Date Approved |
> |---|---|
> | R. 396 | June 25, 1978 |
>
> We would request expeditious consideration of this Act. If additional information is needed, please contact me.

Id. at 644. The court stated that "[i]t is apparent from the above letter that the State submitted the *entire* Home Rule Act to the [USAG] for his consideration within the sixty-day statutory period." *Id.* (Emphasis in original.) The USAG responded and (1) did not expressly object to

a referendum provision; (2) reserved the right to object to the implementation of the selected form of government pursuant to the referendum; and (3) was silent on a transfer of powers provision. The court held that *Morris* compelled a finding that the USAG had precleared the complete submission:

> Here, the Attorney General's silence on the transfer of powers in the Home Rule Act clearly dooms his belated attempt to label the assumption of such powers by the county council as an "uncleared change." Whatever may have been the motive of the Attorney General in failing to object to their transfer of powers in his...letter, the fact remains that the State submitted the entire Home Rule Act and, under the law, the Attorney General...was required to pass on all components of a complete submission at that time. *Id.* at 646.

We find that there are no genuine issues of material fact concerning the preclearance, *vel non*, of the entire Uniform School Law of 1986 and hold that it was precleared in its entirety, including the repeal of § 37-7-611. A uniform act was submitted; by its title alone, the act signalled a massive reorganization of various laws. The submission was complete and unambiguous. And, under *Morris*, the USAG's later objection was of no effect.[7] Accordingly, the defendants and intervenors are entitled to summary judgment on plaintiffs' claim that the repeal of § 37-7-611 is not enforceable.

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[7] Because we find that the submission was complete, we need not decide whether § 37-7-611 was precleared by implication, due to the undisputed preclearance of § 37-7-103.

Likewise, as for § 21-1-59, there are no genuine issues of material fact concerning the preclearance, *vel non,* of the 1977 amendment. The 1977 amendment has not been precleared. The amendment was not submitted until March 23, 1990; and the USAG interposed an objection. The defendants' argument that the approval of the 1978 amendment cured the failure to submit the 1977 amendment for preclearance is without merit. This argument has been specifically rejected by Supreme Court decisions in *McCain* and *Sheffield,* discussed *supra.*

The only provision of the 1978 amendment to § 21-1-59 which was precleared was the referendum provision and not the "extends into or further extends" language now in issue. The MAG's December 30, 1980, cover letter stated that "[f]rom the wording of the language as amended it appears that this amendment would apply only to Jones County." This language pertains to the referendum provision. The Attorney General's March 1981 response is clear:

> This is in reference to House Bill No. 1092...which provides for a referendum for municipalities in certain counties to determine whether a municipal expansion shall affect the public school system in the annexed area....The Attorney General does not interpose any objection to the change in question.

The USAG response is limited to the referendum issue and that is the only provision which was precleared.

We hold, therefore, that the 1977 and 1978 amendments in issue to § 21-1-59 have not been precleared. Accordingly, these amendments are unenforceable. Therefore, the plaintiffs are entitled to summary judgment on their claim that the 1977 and 1978 amendments in

issue to § 21-1-59 are not enforceable.[8]

THEREFORE, IT IS ORDERED:

1. Ray Mabus, the Governor of Mississippi, is dismissed from this action;

2. Summary Judgment is awarded plaintiffs on their claim that the 1977 and 1978 amendments in issue to § 21-1-59 are not enforceable; and

3. Summary judgment is awarded the defendants and intervenors on plaintiffs' claim that the repeal of § 37-7-611 is not enforceable.

Final Judgment will be entered.

SO ORDERED, this is the 1st day of April, 1991.

/S/ Rhesa H. Barksdale
UNITED STATES CIRCUIT JUDGE

/S/ Tom S. Lee
UNITED STATES DISTRICT JUDGE

/S/ Henry T. Wingate
UNITED STATES DISTRICT JUDGE

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[8] The practical effect of this holding is another matter. The amendments to § 21-1-59 provided that the school district in the annexed area will not be affected without consent from the county school board; the amendments to § 21-1-59 were an exception tot he automatic extension provision of § 37-7-611. Section 37-1-103, which has been precleared, provides for the same procedure as the 1977 and 1978 amendments to § 21-1-59; and § 37-7-611's repeal has been precleared.

Furthermore, the intervenors contend that we must consider the racial impact and the potential for interference with existing desegregation orders of any relief we grant under § 5. Even it is were proper for us to consider such issues in a preclearance case, § 37-7-103, precleared in 1986, provides for the same result as the amendments in issue to § 21-1-59 which have not been precleared.